

BANKRUPTCY RELATED DECISIONS
U.S. BANKRUPTCY COURT, DISTRICT OF NORTH DAKOTA
U.S. DISTRICT COURT, DISTRICT OF NORTH DAKOTA
EIGHTH CIRCUIT COURT OF APPEALS & U.S. SUPREME COURT
November 22, 1989 through March 5, 1997

ABANDONMENT

In re Olson, 930 F.2d 6
(8th Cir. 1991)

Abandonment of property by Chapter 7 estate was not a "sale or exchange," and was accordingly not a taxable event giving rise to federal or Iowa tax liability for the estate.

Vreugdenhill v. Navistar Intern. Transp. Corp.,
950 F.2d 524 (8th Cir. 1991)

Claim by Chapter 7 debtor-dealer against supplier had not been necessarily "scheduled," and claim accordingly had not been abandoned by operation of law when case was closed, where debtor had only raised the issue in motion for order to show cause.

ABSTENTION

In re Haugen, 120 B. R. 124
(Bankr. D.N.D. 1990)

Discretionary abstention was appropriate with respect to debtor's adversary proceeding seeking monetary damages for excessive and wrongful levy, emotional distress, and conversion.

In re Apex Oil Co.,
980 F.2d 1150 (8th Cir. 1992)

District court properly abstained from trying merchant mariners' asbestos claims against Chapter 11 debtors so that

their claims could be pursued in Pennsylvania district where the claims had been transferred by the judicial panel on multidistrict litigation.

ACCOUNTS RECEIVABLE

In re Koppinger, 113 B. R. 588,
(Bankr. D.N.D. 1990)

Perfected security interest in accounts receivable for sale of motor fuel was not broad enough to encompass amounts representing fuel taxes.

ADMINISTRATIVE EXPENSES

In re Woods Farmers Co-op. Elevator Co., 107 B. R. 694,
(Bankr. D.N.D. 1989)

Lessors of grain storage facility to debtor could recover postpetition rents as administrative expenses.

I.R.S. v. Boatmen's First Nat. Bank of Kansas City,
5 F.3d 1157 (8th Cir. 1993)

Administrative claims as a rule may not be charged against secured collateral but may be charged against a secured creditor who agrees to continued operation - the "benefit" lies in the creditor's ambition to improve its position.

In re Larsen, 59 F.3d 783
(8th Cir. 1995)

Statute according priority of distribution to administrative expense claims accorded priority only to claims allowed in pending Chapter 7 case, not in cases dismissed almost three years earlier.

APPEAL

In re Champion, 895 F.2d 490

Denial of motion to vacate

(8th Cir. 1990)

dismissal of bankruptcy appeal was not abuse of discretion, given movant's failure to file designation of record or statement of issues as required by Bankruptcy Rule 8006.

Franzen v. Federal Land Bank of Omaha, 897 F.2d 973
(8th Cir. 1990)

Order dismissing bankruptcy court judge, on grounds of judicial immunity, from action in which plaintiffs alleged that the judge had mishandled proceedings related to foreclosure action, was not an appealable final order.

Travelers Ins. v. KCC-Leawood Corp Manor I, 908 F.2d 343
(8th Cir. 1990)

District court order, finding that bankruptcy court had implicitly denied confirmation of reorganization plan and remanding case to the bankruptcy court for further proceedings, was not a final, reviewable order.

Jacobson v. Nielsen,
932 F.2d 1272 (8th Cir. 1991)

Appeal from judgment in adversary proceeding was properly dismissed for failure to file, without a showing of excusable neglect, notice of appeal within ten days of entry of bankruptcy court's order.

In re Gaines, 932 F.2d 729
(8th Cir. 1991)

Order granting motion extending time for filing complaints objecting to discharge in Chapter 7 case

Connecticut National Bank
v. Germain, 503 U.S. 249
112 S.Ct. 1146 (1992)

In re Russell, 957 F.2d 534
(8th Cir. 1992)

Currell v. Taylor, 963 F.2d 166
(8th Cir. 1992)

Olive Street Inv., Inc. v.
Howard Sav. Bank, 972 F.2d 214
(8th Cir. 1992)

In re Woods Farmers Co-op.
Elevator Co., 983 F.2d 125
(8th Cir. 1993)

was not a final, appealable
order.

An interlocutory order
issued by a district
court sitting as a
court of appeals in
bankruptcy is appealable
under 28 U.S.C.A.
§1291.

District court order
dismissing trustee's claim
for punitive damages
against debtor for
fraudulent concealment of
estate assets was not
appealable under collateral
order doctrine.

District court order
requiring bankruptcy court
to make additional rulings
and factual determinations
was not final and
appealable.

Appeal from district
court's dismissal of
Chapter 11 debtor's
appeal from bankruptcy
court order lifting
automatic stay had
become moot in light
of debtor's failure to
appeal dismissal of
case to the Court of
Appeals.

Creditor's appeal from
district court order
remanding matter to
bankruptcy court had to

be dismissed for lack of jurisdiction.

In re Trout, 984 F.2d 977
(8th Cir. 1993)

Trustee's appeal of district court order affirming bankruptcy court's exclusion of property from estate was premature, where trustee had filed "motion for reconsideration," which was construed as motion to alter or amend judgment, but district court had not yet ruled on that motion.

Lewis v. U.S. Farmers Home Admin., 992 F.2d 767
(8th Cir. 1993)

Bankruptcy court order that sustained objections to confirmation of Chapter 13 debtor's proposed plan, outlined elements of acceptable plan, and gave debtor ten days to submit a conforming plan or face dismissal was not a "final" appealable order.

In re Harlow Fay, Inc.,
993 F.2d 1351 (8th Cir. 1993)

Chapter 11 debtor's counsel's financial pressures, relocation and staff reduction did not establish the excusable neglect required for granting extension of time for filing appellate brief on appeal from dismissal of bankruptcy petition.

In re Roller, 999 F.2d 464
(8th Cir. 1993)

Debtors' appeal from order reinstating their Chapter

12 petition was properly dismissed as moot.

In re B.J. McAdams, Inc.,
999 F.2d 1221 (8th Cir. 1993)

Creditor's motion to make additional fact findings and to amend judgment was timely even though it was filed before judgment had been entered.

In re Pleasant Woods Associates Ltd. Partnership, 2 F.3d 837 (8th Cir. 1993)

Bankruptcy court's denial of confirmation of Chapter 11 plan was not "final order" that Court of Appeals had jurisdiction to consider.

In re Bank Bldg. and Equipment Corp. of America, 23 F.3d 1390 (8th Cir. 1994)

District court order remanding preference proceeding to the bankruptcy court was not final, and, thus, order was not appealable.

Bankruptcy Estate of United Shipping Co., Inc. v. General Mills, Inc.
34 F.3d 1383 (8th Cir. 1994)

Deferential standard, rather than de novo standard, applied in reviewing district court judgment affirming bankruptcy court's decision giving effect to determination by ICC that agreement between shipper and carrier was for contract carriage, rather than common carriage.

Things Remembered, Inc. v. Petrarca,
516 U.S. 124 , 116 S.Ct. 494 (1995)

Section 1447(d) precludes appellate review of any order remanding a case to state court due to a defect in procedure

or lack of jurisdiction.

Cochrane v. Vaquero Investments,
76 F. 3d 200 (8th Cir. 1996)

Bankruptcy court orders
ruling on creditors'
objection to debtor's
exemption claim were not
final, appealable orders
because orders did not
conclusively resolve issue
of whether debtor's Florida
condominium property was
exempt from debtor's
bankruptcy estate.

In re Melp, Ltd., 79 F.3d 747
(8th Cir. 1996)

District court order
finding portion of
requested attorney fees
granted by bankruptcy
court to be non-recoverable
as matter of law was not
final and appealable
because order also vacated
entire fee award and
remanded case for further
inquiry into whether
services for which other
fees were incurred
benefitted estate.

ATTORNEYS

In re Classic Roadsters, Ltd.,
150 B.R. 751 (Bankr. D.N.D. 1993)

Law firm which was creditor
of Chapter 11 debtor and
whose partner was escrow
agent for debtor and
another creditor could
not be employed to
represent debtor in

bankruptcy proceeding.

U.S. v. Olson, 4 F.3d 562
(8th Cir. 1993)

Attorneys cannot claim an equitable lien or judicial lien in funds not in possession absent a state statute providing for the same.

In re Coones Ranch, Inc.,
7 F.3d 740 (8th Cir. 1993)

Debtor's attorney could be sanctioned for assisting debtor in filing Chapter 11 petition four days after debtor was incorporated.

ATTORNEY FEES

In re Reed, 890 F.2d 104
(8th Cir. 1989)

Legal services performed by debtor's attorney in defending dischargeability complaint benefited only debtor, not estate, and the fees for such services thus were not recoverable from debtor's estate.

In re Trout, 108 B.R. 235,
(Bankr. D.N.D. 1989)

Debtor's counsel would be sanctioned for failure to disclose complete settlement terms between debtor and creditor.

In re Robertson Companies, Inc., 123 B.R. 616
(Bankr. D.N.D. 1990)

Minneapolis firm representing North Dakota debtor with far-flung interests was entitled to be compensated at hourly rate in excess of that typical for North Dakota firms.

In re Jelinek, 153 B.R. 279
(Bankr. D.N.D. 1993)

Attorney who crafted Chapter 11 plans on behalf

of secured creditor, and who acted as counsel for plans' liquidating agent after confirmation, was entitled to attorney fees as administrative expenses.

In re Schriock Const., Inc.,
176 B.R. 176 (Bankr. D.N.D. 1994)

(8th Cir. 1997)

Oversecured creditor was not entitled to attorney fees as part of its claim, absent contractual agreement for payment of such fees enforceable under state law.

In re Kline, 65 F.3d 749
(8th Cir. 1995)

Attorney fee awards that are in the nature of alimony or support are nondischargeable under § 523(a)(5) even if payable directly to an attorney.

In re Kohl, 95 F.3d 713
(8th Cir. 1996)

Chapter 7 debtor's attorney, whose services did not benefit estate, was not entitled to compensation for services rendered in debtor's prior Chapter 7 and Chapter 11 proceedings.

AUTOMATIC STAY

Croyden Associates v. Alleco, Inc., 969 F.2d 675
(8th Cir. 1992)

The stay required under section 362 extends only to claims against the debtor and is not available to non-debtor co-defendants, even if they are in a similar legal or factual nexus with the debtor.

U.S. Through Farmers Home Admin. v. Nelson,

Stay is not violated by a post-petition letter sent

969 F.2d 626
(8th Cir. 1992)

by a codebtor (FmHA)
advising a debtor of
various loan options and
remedies.

In re Larson, 979 F.2d 625
(8th Cir. 1992)

Mortgagee's filing of
addendum for North
Dakota "collateral real
estate mortgage" did not
violate automatic stay.

In re Hale, 980 F.2d 1176
(8th Cir. 1992)

Bankruptcy court did not
have affirmative obligation
to enter stay in bankruptcy
proceeding brought to
recover damages for alleged
automatic stay violation
pending outcome of related
criminal investigation

AVOIDABLE TRANSFERS

In re Trout, 146 B.R. 823
(Bankr. D.N.D. 1992)

Under Montana law, Chapter
7 trustee's constructive
notice of debtor's former
wife's interest in property
when she was in sole
possession of premises
precluded trustee from
using strong-arm powers
as bona fide purchaser to
avoid debtor's prepetition
transfer by quitclaim
deed of his interest to
former wife.

CASH COLLATERAL - USE OF

In re Trout, 123 B.R. 333
(Bankr. D.N.D. 1990)

Use of cash collateral
satisfied statutory
requirements, and
stipulations for use of
cash collateral were valid
and binding, entitling
creditor whose cash

collateral was used to lien
on post-petition
collateral.

CHAPTER 11

Toibb v. Radloff, 501 U.S. 157,
111 S. Ct. 2197,
115 Ed. 2d 145
(1991)

Held:
The Bankruptcy Code's
plain language permits
individual debtors not
engaged in business to file
for relief under Chap. 11.
Toibb is a debtor within
the meaning of sec. 109(d),
which provides that "a
person who may be a debtor
broker, and a railroad may
be a debtor under chap.
11." He is a person who
may be a Chap. 7 debtor,
since only railroads and
various financial and
insurance institutions are
excluded from Chapter 7's
coverage, and § 109(d)
makes Chap. 11 available
to all entities eligible
for Chap. 7 protection,
Chap. 11's structure and
legislative history
indicate that it contains
no ongoing business
requirement for Chap. 11
reorganization; and there
is no basis, including
underlying policy
considerations, for
imposing one.
902 F.2d 14, reversed.

In re Tranel, 940 F.2d 1168
(8th Cir. 1991)

Creditors may file a
liquidating plan if debtor
fails to file its own plan
within 120 day period.

In re Windsor on the River
Associates, Ltd., 7 F.3d 127
(8th Cir. 1993)

Chapter 11 debtor may not manufacture impairment of class to satisfy cramdown requirement that at least one impaired class accept the plan.

Harstad v. First American Bank,
39 F.3d 898 (8th Cir. 1994)

A Chap. 11 debtor may not motion a post-confirmation preference action unless the plan itself provides for the retention and enforcement of [that claim or intent] by the debtor and it is clear that any recovery will benefit creditors.

CHAPTER 13

Miller v. U.S. Through Farmers
Home Admin.
907 F.2d 80 (8th Cir. 1990)

Unsecured portion of any undersecured obligation should be treated as unsecured debt in determining debtor's Chapter 13 eligibility under the debt limitations of \$100,000 unsecured debt and \$350,000 secured debt.

In re Slaughter, 188 B.R. 29,
(Bankr. D.N.D. 1995)

Chapter 13 plan may provide for direct payment of impaired secured claims and thereby avoid otherwise requisite trustee fee.

In re LeMaire,
898 F.2d 1346
(8th Cir. 1990)

Chapter 13 plan, proposing discharge of civil judgment awarded the victim of debtor's intentional shooting, was not proposed

in good faith and would not be confirmed.

Johnson v. Home State Bank,
501 U.S. 78, 111 S.Ct. 2150
(1991)

A mortgage lien securing an obligation for which a debtor's personal liability has been discharged in a Chap. 7 liquidation is a "claim" within the meaning of § 101(5) and is subject to inclusion in an approved Chap. 13 reorganization Plan. Congress intended in § 101(5) to incorporate the broadest available definition of "claim", see Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. __. ... 904 F. 2d 563, reversed and remanded.

In re Leser, 939 F.2d 669
(8th Cir. 1991)

Chapter 13 plan providing for separate classification and treatment of unsecured claims for child support arrearages assigned to county collection departments by debtor's former wife did not unfairly discriminate against other unsecured claims.

In re Molitor, 133 B.R. 1020
(Bankr. D.N.D. 1991)

Chapter 13 plan, proposing repayment of deeds of trust over 15 years, Could not be confirmed.

Noreen v. Slattengren,

Chapter 13 plan denied

974 F.2d 75 (8th Cir. 1992)

confirmation and upon finding that Chapter 13 case was filed in bad faith in anticipation of large tort award.

Rake v. Wade, 508 U.S. 464

An oversecured mortgage 113 S. Ct. 2187 (1993) was entitled to pre-confirmation and post-confirmation interest on arrearages that were paid off under Chapter 13 plans.

Nobelman v. American Savings Bank, 508 U.S. 324, 113 S.Ct. 2106 (1993)

A Chapter 13 debtor may not reduce the claim of an undersecured homestead mortgage to the fair market value of the debtor's principal residence.

Security Bank of Marshalltown, Iowa v. Neiman, 1 F.3d 687 (8th Cir. 1993)

The Chapter 13 estate continues to exist as a legal entity after confirmation even if, pursuant to § 1327, property of the estate has vested in the debtor.

In re Ficken, 2 F.3d 299 (8th Cir. 1993)

Unsecured portion of Chapter 13 debt had to be considered for purposes of Chapter 13 qualification in determining whether total unsecured debt exceeded \$100,000 and rendered them ineligible for relief.

In re Groves, 39 F.3d 212,

Nondischargeability of (8th Cir. 1994) student loans was not a sufficient basis for separate classification. A plan may pay student

loans pro rata along with other unsecured claims and as a continuing obligation thereafter or may treat it as a long term indebtedness under § 1322(b)(5) by curing arrearages and maintaining regular payments.

In re Montgomery, 37 F.3d 413
(8th Cir. 1994)

Failure to attend creditors meeting may constitute "willful failure to abide by orders of the court" and preclude filing for relief for a 180 day period under § 109(g). Debtor bears burden of showing his failure to attend was not willful.

In re Kjellsen, 53 F.3d 944
(8th Cir. 1995)

Debtor's daughter who had been given durable power of attorney could not file Chapter 13 petition on debtor's behalf after guardian for debtor's estate was appointed.

In re Molitor, 76 F.3d 218
(8th Cir. 1996)

Bankruptcy court could convert a Chapter 13 case to a Chapter 7 upon a showing that the petition had been filed in bad faith.

In re Roso, 76 F. 3rd 179
(8th Cir. 1996)

A "market rate of interest" required by § 1325 does not include FmHA's subsidized interest rate. The term is the rate that would be offered to the debtor by a commercial lender.

CLAIMS

In re Apex Oil Co.,
958 F.2d 243
(8th Cir. 1992)

Denial of due process did not occur when bankruptcy judge disposed of claim with finality, even if debtor's counsel believed that the hearing was to be confined to an estimate of claim for purposes of posting security.

Evans v. F.D.I.C.,
981 F.2d 978 (8th Cir.1993)

Any right of debtor to interpleaded fund, representing surplus remaining at conclusion of bankruptcy case, was subordinate to other claims.

In re Collins Securities Corp.,
998 F.2d 551 (8th Cir. 1993)

FDIC, as insurer of failed savings and loan association, did not act arbitrarily or capriciously in denying deposit insurance claim of bankruptcy trustee for assignee of certificate of deposit.

In re Windsor on the River Associates, Inc., 7 F.3d 127
(8th Cir. 1993)

A claim is not impaired for cramdown purposes if alteration of rights in question arises solely from debtors exercise of discretion to create "artificial impairment".

In re Mathiason, 16 F.3d 234
(8th Cir. 1994)

When an objection to claim is joined with a request that they can't "determine

the status" of the claim the litigator becomes an adversary proceeding and all issues relative to claim validity must be raised or will be regarded as waived.

Abbott Bank v. Armstrong,
44 F.3d 665 (8th Cir. 1995)

Claim by Chapter 7 debtors that bank's \$1 million claim was extinguished by failure to give some proper notice of sale of \$950 of hay and some farm equipment was barred by collateral estoppel springing from prior decision of Court of Appeals affirming denial of discharge based on transfer with intent to hinder, delay, or defraud creditor, even though debtors' initial pleading in prior proceeding admitted that bank was creditor; heart of controversy in prior proceeding was whether debtors had acted with intent to defraud creditor, and holding rested on conclusion that creditor status was established.

Smith v. Dowden, 47 F.3d 940
(8th Cir. 1995)

A proof of claim is revocable and a creditor may withdraw its proof of claim, the jurisdictional effect of which, is to restore the creditor's right to jury trial.

McSherry v. Trans World Airlines, Inc., 81 F.3d 739 (8th Cir. 1996)

The Code definition of "claim" is broad enough to include an obligation on which a civil action would be premature because of jurisdictional prerequisites.

In re Be-Mac Transport Co., Inc., 83 F.3d 1020 (8th Cir. 1996)

A secured creditor need not file a claim to preserve its lien. A proof of claim, if filed, is prima facie proof of their claim and is deemed allowed if no objection, but may lose its lien if not provided for in the plan, provided the lienholder participated in the reorganization. A secured claim cannot be disallowed solely on grounds that second amended claim clarifying its status, was untimely.

COLLATERAL ESTOPPEL

Abbott Bank v. Armstrong, 44 F.3d 665 (8th Cir. 1995)

Claim by Chapter 7 debtors that bank's \$1 million claim was extinguished by failure to give some proper notice of sale of \$950 of hay and some farm equipment was barred by collateral estoppel springing from prior decision of Court of Appeals affirming denial of discharge based on transfer with intent to hinder, delay, or defraud creditor, even though debtors' initial pleading in prior proceeding admitted that bank was

creditor; heart of controversy in prior proceeding was whether debtors had acted with intent to defraud creditor, and holding rested on conclusion that creditor status was established.

In re Knodle, 187 B.R. 660
(Bankr. D.N.D. 1995)

Criminal restitution obligation imposed as condition of Chapter 7 debtor's criminal sentence came within discharge exception for fine, penalty, or forfeiture payable to governmental unit.

Stoebner v. Murray, 91 F.3d 1091
(8th Cir. 1996)

Collateral estoppel bars relitigation where issue to be precluded is same as that actually litigated in a prior action and determined by a valid final judgment.

In re Goetzman, 91 F.3d 1173
(8th Cir. 1996)

Under the Rooker-Feldman doctrine, lower federal courts lack jurisdiction to engage in appellate review of state court determinations. A confirmed plan, incorporating stipulated terms, generated a dispute over the amount due and debtors filed suit in state court for specific performance with the lender filing for foreclosure. The resulting state court decision determined the amount due on the mortgage and precluded federal review.

CONSOLIDATION

In re Giller, 962 F.2d 796
(8th Cir. 1992)

Substantive consolidation was appropriate for the Chapter 11 cases of six corporate debtors which shared common sole or majority shareholders.

CONTEMPT

In re Ragar, 3 F.3d 1174
(8th Cir. 1993)

Bankruptcy jurisdictions have criminal contempt power to the extent that they may recommend to a district court that persons be held in criminal contempt.

Wright v. Nichols, 80 F.3d 1248
(8th Cir. 1996)

By signing over check made out to corporation, corporate president violated Bankruptcy Court's temporary restraining order prohibiting removal of corporate funds, and committed criminal contempt because act was volitional and president knew or should reasonably have been aware that her conduct was wrongful.

CONTRACTS

In re Gerald Harris Builder, Inc., 927 F.2d 1067
(8th Cir. 1991)

Bankruptcy court determination that amounts general contractor owed subcontractor were "extras" which the parties had agreed would be paid at the end of road construction project was not clearly erroneous.

U.S. on Behalf of U.S. Postal Service v. Dewey Freight System, Inc., 31 F.3d 620 (8th Cir. 1994)

United States Postal Service was not entitled to recoup damages incurred when Chapter 11 debtor refused to perform executory contracts against sums that the USPS owed the debtor for postpetition trucking services under the contracts.

CONVERSION OF CASE

In re Ashton, 107 B. R. 670, (Bankr. D.N.D. 1989)

Chapter 11 case would be converted to Chapter 7, based on debtor's failure to propose confirmable reorganization plan.

In re Graven, 936 F.2d 378 (8th Cir. 1991)

Bankruptcy court could involuntarily convert pending Chapter 12 case to Chapter 7 based on debtors' alleged fraud, even though the debtors had filed prior motion to voluntarily dismiss.

Reinbold v. Dewey County Bank, 942 F.2d 1302 (8th Cir. 1991)

Bankruptcy court's finding of fraud was sufficiently supported by the evidence and, therefore, conversion of case from Chapter 12 to Chapter 7 was proper.

In re Schriock Const., 167 B.R. 569 (Bankr. D.N.D. 1994)

Postpetition negative cash flow position of debtor justified conversion of Chapter 11 case to Chapter 7 liquidation.

In re Estate of Graven, 64 F.3d 453 (8th Cir. 1995)

Findings in prior proceeding to convert case from Chapter 12 to Chapter

7, that debtor fraudulently transferred assets to closely held corporation and to trust with intent to hinder, delay or defraud creditors, applied in trustee's subsequent proceeding to recover the fraudulent transfers.

In re Molitor, 76 F.3d 218
(8th Cir. 1996)

Bankruptcy court could convert a Chapter 13 case to a Chapter 7 upon a showing that the petition had been filed in bad faith.

CORPORATIONS

In re Dakota Drilling, Inc.,
135 B.R. 878 (Bankr. D.N.D. 1991)

Trustee for Chapter 7 debtor-corporation did not have standing to pursue alter ego remedy against debtor's principal officers.

Keenihan v. Heritage Press, Inc.
19 F.3d 1255 (8th Cir. 1994)

Since authority to file bankruptcy petition for corporation derives from state law, state court TRO, which recognized corporations former owner as president following ouster of new owner as president, precluded new owner from filing petition on behalf of corporation.

In re Reeves, 65 F.3d 670
(8th Cir. 1995)

To be liable as an "initial transferee" for purposes of § 550(a)(2), a party

must be more than a conduit, it must exercise dominion and control over the property transferred.

In re B.J. McAdams, Inc.,
66 F.3d 931 (8th Cir. 1995)

Corporate creditor was mere alter ego of Chapter 7 corporate debtor, requiring creditor's corporate form to be disregarded and its lien on estate property voided.

COURTS

Franzen v. Federal Land Bank of Omaha, 897 F.2d 973
(8th Cir. 1990)

Order dismissing bankruptcy court judge, on grounds of judicial immunity, from action in which plaintiffs alleged that the judge had mishandled proceedings related to foreclosure action, was not an appealable final order.

Bankruptcy Estate of United Shipping Co., Inc. v. General Mills, Inc.
34 F.3d 1383 (8th Cir. 1994)

Deferential standard, rather than de novo standard, applied in reviewing district court judgment affirming bankruptcy court's decision giving effect to determination by ICC that agreement between shipper and carrier was for contract carriage, rather than common carriage.

CRAMDOWN

In re Fisher, 930 F.2d 1361
(8th Cir. 1991)

Discount rate based upon "market rate" formula should have been applied to determine the present value of allowed secured claim of lender which made loans at below-market interest rate, for cramdown purposes in Chapter 12 case.

In re Windsor on the River Associates, Inc., 7 F.3d 127
(8th Cir. 1993)

A claim is not impaired for cramdown purposes if alteration of rights in question arises solely from debtor's exercise of discretion to create "artificial impairment".

CREDIT CARDS

In re Hinman, 120 B.R. 1018
(Bankr. D.N.D. 1991)

Credit card debt was nondischargeable.

In re Larson, 136 B. R. 540
(Bankr. D.N.D. 1992)

Credit card user was not denied Chapter 7 discharge for failure to list credit card debts on original Chapter 11 schedules, even though he continued using credit cards after Chapter 11 filing.

In re Foley, 156 B.R. 645
(Bankr. D.N.D. 1993)

Debt incurred on pre-approved credit line account came within fraud exception to discharge.

In re Kerbaugh, 162 B.R. 255

Credit card debt was

(Bankr. D.N.D. 1994)

nondischargeable due to debtor's use of false information regarding his financial condition in credit application.

CRIMES

U.S. v. Yagow, 953 F.2d 427
(8th Cir. 1992)

False statements in affidavits supporting in forma pauperis motions filed in suits brought by former debtor against liquidating trustee and creditors were "material" and were made "in relation to" bankruptcy case, within meaning of bankruptcy criminal fraud statute.

U.S. v. French, 46 F.3d 710,
(8th Cir. 1995)

A chapter 7 debtor was convicted of criminal conversion and bankruptcy fraud stemming from his intentional failure to comply with FmHA cattle sale reporting requirements and conversion of sale proceeds.

U.S. v. Anderson, 68 F.3d 1050
(8th Cir. 1995)

District court properly calculated intended loss that defendant attempted to inflict by concealing assets in bankruptcy case, for purpose of base offense level for bankruptcy fraud, by measuring difference between maximum potential loss based on undisclosed assets and amount defendant actually repaid in settlements to creditors who did not know true

U.S. v. Cheek, 69 F.3d 231
(8th Cir. 1995)

extent of his assets.

Increase in base offense level for bankruptcy fraud, on abuse of judicial process, did not constitute impermissible double counting, but instead demonstrated that bankruptcy fraud involved higher level of culpability.

CRIMINAL JUSTICE

U.S. v. Little, 990 F.2d 1090
(8th Cir. 1993)

Defendant-auditing company president who pled guilty to concealing assets from bankruptcy trustee was not entitled under the federal sentencing guidelines to two point reduction in base offense level for acceptance of responsibility.

CRIMINAL LAW

U.S. v. Snover, 900 F.2d 1207,
(8th Cir. 1990)

In sentencing defendants for concealment of bankruptcy assets, court could consider, as aggravating factors warranting departure from sentencing guidelines, defendants' selling farm equipment under aliases not listed in bankruptcy petition, and receiving rental payments through a numbered bank account.

U.S. v. Fousek, 912 F.2d 979,
(8th Cir. 1990)

Under Sentencing Guidelines court properly took into consideration embezzlement

U.S. v. Lloyd, 947 F.2d 339
(8th Cir. 1991)

defendant's position as
bankruptcy trustee as basis
for upward sentence
departure.

U.S. v. Robbins, 997 F.2d 390
(8th Cir. 1993)

Debtor's conduct in
concealing assets from
bankruptcy court officers
and committing perjury
during bankruptcy pro-
ceedings did not warrant
sentence enhancement
for obstruction of justice.

Doctrine of confusion of
assets was not admissible
to prove that property
was part of bankruptcy
estate, in criminal
prosecution for fraudulent
concealment of estate
property.

U.S. v. Graham, 60 F.3d 463
(8th Cir. 1995)

Chapter 7 debtor's
repetition of same false
statements at three
successive meetings of
creditors, in attempt to
conceal same asset and
prevent its inclusion in
bankruptcy estate, did not
permit prosecution of
debtor for three separate
counts of making false
statements, even though on
each occasion that debtor
repeated falsehood he was
being questioned by
different individual.

U.S. v Christner,
66 F.3d 922 (8th Cir. 1995)

Counts of indictment
charging Chapter 11 debtor
with bankruptcy fraud

were not multiplicitous in violation of debtor's rights under double jeopardy clause, even if counts involved same property.

DAMAGES

Small Business Administration v. Rhinehart, 887 F.2d 165 (8th Cir. 1989)

Bankruptcy Code provision governing waiver of sovereign immunity did not authorize award of punitive damages against the United States for willful violation of automatic stay.

Hicks v. Capitol American Life Ins. Co., 943 F.2d 891 (8th Cir. 1991)

Appropriate measure of loss on promissory note incurred by holder of note who received discounted amount for note during his bankruptcy was no more than principal amount less discounted value received, plus interest since breach, as opposed to future value of all payments to be received, less discounted value.

Landscape Properties, Inc. v. Vogel, 46 F.3d 1415 (8th Cir. 1995)

A cause of action for damages under section 363(n) is comparable to damage claims for recovery of preferences and the claim is therefore inherently legal in nature entitling the defendants to a jury trial.

DENIAL OF DISCHARGE

In re Craig, 195 B.R. 443

Here, the debtor's history

(1996)

of transferring family assets into his wife's name, omitting any reference to them in his schedules, established a pattern of continuing concealment warranting denial of discharge under § 727(a)(2) and (a)(4).

DISCHARGE

In re Osterberg, 109 B.R. 938,
(Bankr. D.N.D. 1990)

Debtor's divorce decree obligation to assume marital debts was in nature of nondischargeable support.

Bush v. Taylor, 893 F.2d 962
(8th Cir. 1990)

Chapter 7 debtor was entitled to discharge of his ongoing obligation under state court divorce decree to remit to his former wife one-half of the payments received by him under a pension plan.

In re Magnuson, 113 B. R. 555,
(Bankr. D.N.D. 1990)

Debtors' underestimation of cash and deposits in Chapter 7 schedules by more than 81% warranted revocation of discharge.

U.S. v. Vetter, 895 F.2d 456,
(8th Cir. 1990)

Restitution order of federal court in criminal prosecution was exempt from discharge pursuant to § 523(a)(7).

Bush v. Taylor, 912 F.2d 989,
(8th Cir. 1990)

Debtor's obligation to pay his former wife one-half of his pension benefits gave rise to constructive

trust relationship and, therefore, the obligation was not discharged in bankruptcy.

In re Smith, 119 B. R. 714
(Bankr. D.N.D. 1990)

Chapter 7 debtor, who was adjudicated an incapacitated person and under guardianship at all relevant times, did not have ability to form intent required for denial of discharge.

In re Olson, 916 F.2d 481
(8th Cir. 1990)

Despite questionable value of dinner theater nominally owned by debtor's wife, debtor's failure to list his interest in the theater was a material misrepresentation warranting denial of discharge for knowingly and fraudulently making a false oath or account.

In re Hinman, 120 B.R. 1018
(Bankr. D.N.D. 1991)

Credit card debt was nondischargeable.

Grogan v. Garner,
498 U.S. 279, 111 S.Ct. 654,
112 L.Ed.2d 755 (1991)

Preponderance of evidence standard, rather than clear and convincing evidence standard, applies to all discharge exceptions in § 523.

Matter of Armstrong,
931 F.2d 1233 (8th Cir. 1991)

Discharge of Chapter 7 debtors was properly denied on grounds that debtors transferred their property with intent to hinder,

delay, or defraud their creditors.

Ndosi v. State of Minn.,
950 F.2d 1376
(8th Cir. 1991)

Chapter 7 debtors' personal liability for unemployment insurance obligations of corporation for which they were officers and controlling owners did not arise from wages "earned from the debtors," per § 523(a)(7) and was dischargeable.

In re Larson, 136 B. R. 540
(Bankr. D.N.D. 1992)

Credit card user was not denied Chapter 7 discharge for failure to list credit card debts on original Chapter 11 schedules, even though he continued using credit cards after Chapter 11 filing.

Mertz v. Rott, 955 F.2d 596
(8th Cir. 1992)

Chapter 7 debtor's failure to disclose estate tax refund he anticipated and subsequently received was a material misrepresentation warranting denial of discharge, even though refund was allegedly exempt.

In re Hofmann, 144 B.R. 459,
(Bankr. D.N.D. 1992)
affirmed 5 F.3d 1170
(8th Cir. 1993)

Judgment arising out of debtor's failure to return all leased cattle on demand was dischargeable. Plaintiff failed in its proof of willful and malicious conversion of property, embezzlement

In re Bumann, 147 B.R. 44
(Bankr. D.N.D. 1992)

and fraud.

Creditor's contingent,
unliquidated claim
based on Chapter 7 debtor's
willful and malicious
physical assault at
outdoor social function
was nondischargeable.

In re Frey, 150 B.R. 742,
(Bankr. D.N.D. 1993)

Evidence established
that debtor had knowledge
that obligation on note,
while affected by series
of charge offs, had never
been actually cancelled,
and, thus, established
"intent" as required for
debt subsequently incurred
to be nondischargeable
based on false financial
statement.

In re Decker, 153 B.R. 997
(Bankr. D.N.D. 1993)

Debt owed to debtor's
employer, which was liable
under recourse agreement
upon debtor's default
under bank loan, was
nondischargeable on grounds
of either false pretenses
or willful and malicious
injury.

Werner v. Hofmann, 5 F.3d 1170
(8th Cir. 1993)

Court sustained
bankruptcy court in
concluding a state judgment
did not come within the
exception to discharge for
fraud or defalcation while
acting in a fiduciary
capacity, embezzlement,
larceny or willful and
malicious injury.

In re Kerbaugh, 159 B.R. 862
(Bankr. D.N.D. 1993)

Discharge exception for false financial statements applied to debt arising from investor's reliance on debtor's business plan containing inaccurate information.

In re Haakenson, 159 B.R. 875
(Bankr. D.N.D. 1993)

Discharge exception for willful and malicious injury applied to losses sustained by insurance company that purchased insurance business from debtor's insurance agency.

In re Jones, 31 F.3d 659
(8th Cir. 1994)

Chapter 7 debtor-corporate president did not have "intent to deceive" oil company with respect to debt owed to bank and secured by corporation's inventory and accounts receivable when he omitted debt from corporate financial statements submitted to oil company to purchase gasoline on credit.

In re Foust, 52 F.3d 766
(8th Cir. 1995)

Debtor willfully and maliciously injured government agency's collateral for non-dischargeability purposes by secretly converting crop that secured a government loan.

In re Knodle, 187 B.R. 660
(Bankr. D.N.D. 1995)

Criminal restitution obligation imposed as condition of Chapter

7 debtor's criminal sentence came within discharge exception for fine, penalty, or forfeiture payable to governmental unit.

Field v. Mans, 516 U.S. 59, 116 S.Ct. 437 (1995).

The U.S. Supreme Court ruled, 1995 WL 696395, that the standard for excepting a debt from discharge for fraud within the meaning of § 523(a)(2)(A) is not reasonable reliance but the less demanding one of justifiable reliance on the representation.

McSherry v. Trans World Airlines, Inc., 81 F.3d 739 (8th Cir. 1996)

Although a claim for discrimination was contingent upon receipt of a right to sue letter, it nonetheless accrued prepetition and was thus discharged.

In re Craig, 195 B.R. 443, (Bankr. D.N.D. 1996)

Chapter 7 debtor was not entitled to discharge because he concealed assets and failed to disclose transfers of assets purchased with his income but titled in his wife's name.

DISCHARGEABILITY

In re Olson, 154 B.R. 276 (Bankr. D.N.D. 1993)

Tax penalties based on acts that occurred more than three years prepetition are dischargeable regardless of dischargeability status of under-

In re Foley, 156 B.R. 645
(Bankr. D.N.D. 1993)

lying tax debts.

Debt incurred on pre-approved credit line account came within fraud exception to discharge.

In re Kerbaugh, 162 B.R. 255
(Bankr. D.N.D. 1994)

Credit card debt was nondischargeable due to debtor's use of false information regarding his financial condition in credit application.

In re Lacina, 162 B.R. 267
(Bankr. D.N.D. 1994)

Debt arising out of unauthorized and surreptitious acts by debtor-dealer of repeatedly forging seed supplier's endorsement on customers' checks and converting proceeds therefrom to his personal use came within discharge exception for willful and malicious injury.

In re Dammen, 167 B.R. 545
(Bankr. D.N.D. 1994)

False financial statement discharge exception did not apply to Chapter 7 debtor's obligation based on inaccurate and estimated figures the debtor reported in seeking a credit renewal.

In re Roehrich, 169 B.R. 941
(Bankr. D.N.D. 1994)

Chapter 7 debtor's conviction previously entered against him following his guilty plea to charge of theft of

In re Olson, 174 B.R. 543
(Bankr. D.N.D. 1994)

U.S. v. French, 46 F.3d 710,
(8th Cir. 1995)

In re Affeldt, 60 F.3d 1292
(8th Cir. 1995)

In re Straub, 192 B.R. 522
(Bankr. D.N.D. 1996)

horses had collateral estoppel effect in proceeding to determine if related debt fell within exception to discharge for willful and malicious injury.

Debtor-taxpayer's failure to file amended North Dakota income tax returns to reflect federal adjustments following IRS audit did not render obligations nondischargeable.

A chapter 7 debtor was convicted of criminal conversion and bankruptcy fraud stemming from his intentional failure to comply with FmHA cattle sale reporting requirements and conversion of sale proceeds.

Condominium association failed to prove that debtor's obligation for condominium assessments was post petition debt not discharged in prior Chapter 7 case by failing to submit condominium declaration to court.

Chapter 12 debtor's future ability to pay property settlement to his former wife from post-discharge disposable income precluded application of discharge

In re Geiger, 93 F.3d 443
(8th Cir. 1996)
aff'd en banc decision
113 F.3d 848 (8th Cir. 1997)

In re Waugh, 95 F.3d 706
(8th Cir. 1996)

DISMISSAL

In re Eberhart Moving & Storage
Ltd., 120 B. R. 121 (Bankr. D.N.D.
1990)

In re Berndt, 127 B.R. 222
(Bankr. D.N.D. 1991)

In re Montgomery, 37 F.3d 413
(8th Cir. 1994)

exception for non-support
debts.

Conduct which is merely
reckless without proof that
the debtor intentionally
inflicted injury is not
malicious within the meaning
of § 523(a)(6).

Although a determination of
willfulness & maliciousness
invokes a question of intent
factual findings are nonetheless
subject to review where physical,
documentary and other evidence
contradicts a witnesses' story.

Involuntary Chapter 7
petition was filed in
bad faith.

Unsecured debt derived
from use of credit cards
and checking plus accounts
for dabbling in stock
market was "consumer debt,"
within meaning of statute
mandating dismissal for
substantial abuse.

Failure to attend creditors
meeting may constitute
"willful failure to abide
by orders of the court" and
preclude filing for relief
for a 180 day period under
§ 109(g). Debtor bears
burden of showing his
failure to attend was not
willful.

In re Graven, 936 F.2d 378
(8th Cir. 1991)

Finding that Debtors had transferred property prior to their Chapter 12 filing with intent to hinder, delay or defraud creditors was sufficiently supported by evidence permitting the dismissal or conversion of the case.

In re Coones Ranch, Inc.,
7 F.3d 740 (8th Cir. 1993)

Case dismissal sustained where existing debtor transferred encumbered property to a new debtor created simply to file bankruptcy with no prospect for reorganization.

In re Huckfeldt, 39 F.3d 829 (8th Cir. 1994)

Although "cause" for dismissal under § 707(a) is not defined in the statute, it is to be applied narrowly to those situations of extreme conduct unworthy of bankruptcy protection. The mere ability to pay one's debts is not "cause" under § 707(a) but rather, must be considered under § 707(b).

DISMISSAL OF BANKRUPTCY PROCEEDINGS

In re Martwick, 60 F.3d 482
(8th Cir. 1995)

Denial of Chapter 11 debtors' motion for continuance of expedited hearing on secured creditor's motions for relief from automatic stay and to dismiss case was not abuse of discretion.

DISPOSABLE INCOME

In re Berger, 61 F.3d 624
(8th Cir. 1995)

Chapter 12 debtors' race car expenses were disposable income, for purposes of determining amount they were required to pay unsecured creditors to obtain discharge.

In re Hammrich, 98F.3d 388
(8th Cir. 1996)

Determining "disposable income" is a fact intensive inquiry with the ultimate finder resting with debtors to show they are contributing all disposable income to the plan.

Broken Bow Ranch, Inc. v. Farmers Home Admin., 33 F.3d 1005
(8th Cir. 1994)

The amount by which the debtors income exceeds their obligation at the end of their plan, after accountings for carryover funds sufficient to continue the farming operation, is disposable income under § 1225(b)(2).

DIVORCE, ALIMONY & PROPERTY SETTLEMENT

Feldhahn v. Feldhahn,
929 F.2d 1351
(8th Cir. 1991)

Debtor's former wife could subrogate against estate a collateralized assignment to secured creditor in partial payment of debt which debtor was legally obligated to pay pursuant to divorce decree.

Adams v. Zentz, 963 F.2d 197
(8th Cir. 1992)

Attorney fees incurred by ex-husband in seeking to enforce visitation rights did not constitute

support obligation which would be nondischargeable in ex-wife's Chapter 7 case.

Mead v. Mead, 974 F.2d 990
(8th Cir. 1992)

When lien, which Chapter 13 debtor's ex-husband had been granted in divorce decree and which had been released by quitclaim deed, was reinstated on grounds of fraud, debtor could not avoid that lien on her homestead under Bankruptcy Code's lien avoidance provision relying on Farrey v. Sanderfoot.

In re Morel, 983 F.2d 104
(8th Cir. 1992)

Unpaid portion of property settlement embodied in divorce decree was not for support, and, thus, was dischargeable in husband's bankruptcy.

In re Larson, 169 B.R. 945
(Bankr. D.N.D. 1994)

Chapter 7 debtor's obligations under pre-petition divorce decree to make payments to former wife fell within exception to discharge for alimony, maintenance and support.

In re Cross, 175 B.R. 38 (Bankr. D.N.D. 1994)

On motion for summary judgment, bankruptcy court concludes based upon language contained in the divorce court orders that costs and attorneys fees were intended as support.

In re Sateren, 183 B.R. 576
(Bankr. D.N.D. 1995)

Chapter 7 debtor's obligation under state court divorce decree to make periodic payments to former wife was intended to serve as distribution of marital estate or dischargeable property settlement, rather than nondischargeable support obligation.

In re Kline, 65 F.3d 749
(8th Cir. 1995)

Attorney fee awards that are in the nature of alimony or support are nondischargeable under § 523(a)(5) even if payable directly to an attorney.

In re Ellis, 72 F.3d 628
(8th Cir. 1995)

An award of a sum certain representing non-debtor spouses "interest" in pension was not maintenance and support but was dischargeable property settlement because she was not awarded a fixed share as her "sole and separate property."

In re Straub, 192 B.R. 522
(Bankr. D.N.D. 1996)

Chapter 12 debtor's future ability to pay property settlement to his former wife from post-discharge disposable income precluded application of discharge exception for non-support debts.

EXAMINERS

In re Apex Oil Co.,
960 F.2d 728 (8th Cir. 1992)

Bankruptcy court would not need to find that fee

enhancement was necessary to make award commensurate with compensation for comparable, non-bankruptcy services before it could enhance examiner's fee.

In re Haugen, 998 F.2d 1442
(8th Cir. 1993)

Under North Dakota law, individual Chapter 11 debtor had to bear costs of execution sale initiated by creditor.

EXECUTORY CONTRACT

Heartline Farms, Inc. v. Daly,
934 F.2d 985 (8th Cir. 1991)

Installment contract for sale of farmland was a "security device," rather than an "executory contract" subject to assumption or rejection.

Cameron v. Pfaff Plumbing & Heating, Inc., 966 F.2d 414,
(8th Cir. 1992)

Chapter 7 debtor's assignment of his future right to rents from apartment project in exchange for reduction of existing indebtedness to creditors, to be credited upon creditors' receipt of rentals, was an "executory contract" properly rejected by trustee.

EXEMPTIONS

In re Johnson, 108 B. R. 240
(Bankr. D.N.D. 1989)

Under North Dakota law, debtor who suffered serious bodily injury was entitled to exempt \$7,500 of structured

In re Hutton, 893 F.2d 1010
(8th Cir. 1990)

tort settlement.

Savings and investment plan provided by debtor's employer was a "similar plan" within the meaning of Iowa statute providing an exemption for payments under a pension or similar plan.

In re Holt, 894 F.2d 1005
(8th Cir. 1990)

Arkansas statute governing exemptions for proceeds of life, health, accident and disability insurance was in direct conflict with overriding \$500 limitation imposed by Arkansas Constitution, and was thus unconstitutional.

In re Peterson,
897 F.2d 935
(8th Cir. 1990)

Under North Dakota law, debtor's death eight months after filing bankruptcy petition did not constitute abandonment of homestead exemption or cause it to lapse and revert back to the bankruptcy estate.

In re Smith, 113 B. R. 579,
(Bankr. D.N.D. 1990)

Debtor would be permitted to exempt under North Dakota law annuity policy purchased prebankruptcy with nonexempt personal injury insurance proceeds.

In re Lippert, 113 B. R. 576,
(Bankr. D.N.D. 1990)

Chapter 7 debtor had not abandoned homestead at time petition was filed, and thus could claim exemption.

In re Peterson, 920 F.2d 1389
(8th Cir. 1991)

Chapter 7 debtors had good-faith basis under Minnesota statute for homestead exemption claimed for house built on real estate owned by one debtor's father.

In re Wallerstedt,
930 F.3d 630
(8th Cir. 1991)

Federal and state income tax refunds that debtors received when their employers withheld too much of their earnings were not themselves "earnings," within the meaning of Missouri exemption statute.

Taylor v. Freeland & Kronz,
112 S. Ct. 1644, 1992 WL 77247
(U.S. Pa.)

The U.S. Supreme Court ruled that a Chapter 7 trustee could not assert an untimely challenge to the debtor's claimed exemption, even if the debtor did not have a colorable statutory basis for claiming the exemption.

In re Larson, 143 B.R. 543
(Bankr. D.N.D. 1992)

Debtor's claimed exemptions under North Dakota law for nominal value in nearly every exempted asset were taken in bad faith, warranting disallowance.

In re Huebner, 986 F.2d 1222
(8th Cir. 1993)

A Chapter 7 debtor's flexible premium annuities did not come within an Iowa exemption for rights and payments under annuities "on account of" age.

In re Schriock, 192 B.R. 514
(Bankr. D.N.D. 1996)

Urban lots that were separated, either by alley way or by city street, from lot on which Chapter 7 debtor's residence was located could not be included in debtor's homestead claim.

In re Craig, 545 N.W.2d 764
(N.D. 1996)

The monetary limitations of NDCC § 28-22-03.1 applies to all property listed in the section and hence is not unconstitutional.

Christians v. Dulas,
95 F.3d 703 (8th Cir. 1996)

Chapter 7 debtors' right of payment under annuity purchased by alleged tortfeasors as part of structured settlement in personal injury action was no "right of action" that debtors could claim as exempt under special Minnesota exemption for rights of actions for injuries to debtor's person or relative.

Matter of Armstrong,
931 F.2d 1233 (8th Cir. 1991)

Discharge of Chapter 7 debtors was properly denied on grounds that debtors transferred their property with intent to hinder, delay, or defraud their creditors.
person or relative.

EXECUTION FARMERS

In re Ziebarth, 113 B. R. 591,
(Bankr. D.N.D. 1990)

Debtors lacked ability to confirm Chapter 12 reorganization plan, and thus creditor was entitled to relief from stay.

In re Ralph Faber Trust,
113 B. R. 599 (Bankr. D.N.D.
1990)

Testamentary trust was
mere land trust, rather
than business trust,
and thus not eligible for
Chapter 12 relief.

In re Hanna, 912 F.2d 945,
(8th Cir. 1990)

Chapter 12 plan, which
replaced lender's entire
equity cushion in herd
with second mortgage on
agricultural land
encumbered by first
mortgage in excess of
\$400,000, did not satisfy
lien retention require-
ments.

In re Anderson, 913 F.2d 530
(8th Cir. 1990)

Debtors did not make
sufficient showing of
possibility for successful
reorganization, once
creditor established
debtor's lack of equity
in collateral property,
to avoid lifting of stay.

Lee v. Yeutter, 917 F.2d 1104
(8th Cir. 1991)

Farmers who had been
granted discharge in
bankruptcy were not
"borrowers," within
the meaning of the debt
restructuring provisions
of the Agricultural
Credit Act.

Stahn v. Haeckel, 920 F.2d 555
(8th Cir. 1991)

Bankruptcy court had
discretionary power to
order Chapter 12 debtor
to make pre-confirmation
plan payments to trustee
for real estate taxes.

In re Fisher, 930 F.2d 1361

Discount rate based upon

(8th Cir. 1991)

"market rate" formula should have been applied to determine the present value of allowed secured claim of lender which made loans at below-market interest rate, for cramdown purposes in Chapter 12 case.

In re Graven, 936 F.2d 378
(8th Cir. 1991)

Finding that Debtors had transferred property prior to their Chapter 12 filing with intent to hinder, delay or defraud creditors was sufficiently supported by evidence permitting the dismissal or conversion of the case.

Reinbold v. Dewey County Bank,
942 F.2d 1302 (8th Cir. 1991)

Bankruptcy court's finding of fraud was sufficiently supported by the evidence and, therefore, conversion of case from Chapter 12 to Chapter 7 was proper.

In re Oster, 152 B.R. 960
(Bankr. D.N.D. 1993)

Chapter 12 plan that relied on unrealistically optimistic projections was not feasible and was not entitled to confirmation.

In re Kuether, 158 B. R. 151
(Bankr. D.N.D. 1993)

Chapter 12 plan that relied on future purchase of live-stock by debtors whose only interest in farmstead was right of redemption was not feasible for confirmation purposes.

In re Wagner, 159 B.R. 268

Chapter 12 debtor could

(Bankr. D.N.D. 1993)

directly pay impaired claims without paying trustee's fee.

In re Miller, 16 F.3d 240
(8th Cir. 1994)

Chapter 12 debtors' mailing of notice of confirmation hearing to national office of FmHA, rather than to local office specified on FmHA's proof of claim, entitled FmHA to order setting aside confirmed plan.

Rowley v. Yarnall, 22 F.3d 190
(8th Cir. 1994)

Chapter 12 debtors were required to pay net disposable income generated during the plan period to unsecured creditors, where an objection to the plan was previously raised at its confirmation.

In re Foertsch, 167 B.R. 555
(Bankr. D.N.D. 1994)

To provide creditor with payments equal to allowed amount of its oversecured claim, Chapter 12 plan had to provide for payment of interest at market rate of 12%. To be feasible a plan's projections must be pragmatic.

In re Wagner, 36 F.3d 723,
(8th Cir. 1994)

A chapter 12 plan, consistent with requirements of bankruptcy code, may provide for payment of impaired secured claims directly by debtor, without assistance of trustee and without payment of any fee.

In re Wruck, 183 B.R. 862

Chapter 12 debtors could (Bankr. (Bankr. D.N.D. 1995) not modify confirmed plan to allow debtors, rather than standing trustee, to serve as disbursing agent for plan payments, despite Eighth Circuit's post-confirmation ruling that Chapter 12 plans may authorize debtors to be disbursing agents.

In re Berger, 61 F.3d 624 (8th Cir. 1995)

Chapter 12 debtors' race car expenses were disposable income, for purposes of determining amount they were required to pay unsecured creditors to obtain discharge.

In re Honeyman, 201 B.R. 533, (Bankr. D.N.D. 1996)

Proposed Chapter 12 plan, premised upon scaled-down farming operations with income from wheat and cattle sales, was not feasible and could not be confirmed.

In re Hammrich, 98 F.3d 388 (8th Cir. 1996)

Determining "disposable income" is a fact intensive inquiry with the ultimate finder resting with debtor to show they are contributing all disposable income to the plan.

Broken Bow Ranch, Inc. vs. Farmers Home Admin., 33 F.3d 1005 (8th Cir. 1994)

The amount by which the debtor's income exceeds their obligations at the end of their plan, after accountings for carryover funds sufficient to continue the farming operation,

Harmon v. U.S. Acting Through Farmers Home
101 F.3d 618 (8th Cir. 1996)

Pelofsky v. Wallace, 102 F.3d 350
(8th Cir. 1996)

FRAUD

U. S. v. Taylor,
907 F.2d 801
(8th Cir. 1990)

Central States Resources
v. Leo Tobin Farms,
922 F.2d 490
(8th Cir. 1991)

Mid-Tech Consulting, Inc. v.
Swendra, 938 F.2d 885

is disposable income under
§ 1225(b)(2).

Chapter 12 permits debtor to Admin.,
"strip down" undersecured
creditor's lien to value of
collateral.

The percentage fees for
Chapter 12 trustees is based
upon amount the trustee receives
for disbursement to creditors
and does not include sums received
for trustee's fee.

"Exculpatory no" doctrine
applied to preclude
prosecution of debtor's
husband for falsely denying
any knowledge as to who
had forged debtor's name
on bankruptcy petition,
notwithstanding that
husband had received
power of attorney to act
on wife's behalf.

Mortgage debt assumed by
debtor for corporation
in which it had one-half
interest could not be
counted as debt of both
debtor and corporation,
in determining whether
debtor was "insolvent"
under Nebraska's
Fraudulent Conveyance
Act.

Chapter 7 debtors'
discharge would not be

(8th Cir. 1991)

revoked on ground that it had been obtained through fraud, where objecting creditor knew of property and its omission from debtors' schedules before discharge.

In re Jones, 31 F.3d 659
(8th Cir. 1994)

Chapter 7 debtor-corporate president did not have "intent to deceive" oil company with respect to debt owed to bank and secured by corporation's inventory and accounts receivable when he omitted debt from corporate financial statements submitted to oil company to purchase gasoline on credit.

U.S. v. Wade, 83 F.3d 196
(8th Cir. 1996)

Bankruptcy fraud defendant, whose prosecution was undertaken by independent counsel on behalf of United States, failed to show that independent counsel statute was applied in unconstitutional manner in his case.

FRAUDULENT TRANSFERS

In re Janz, 140 B.R. 256
(Bankr. D.N.D. 1991)

Chapter 7 debtors' prepetition transfer of farmland to son was avoidable fraudulent conveyance.

Ramsay v. Vogel,
970 F.2d 471 (8th Cir. 1992)

Bankruptcy Code provision allowing trustee to avoid sale of estate property, or recover damages, if the

sale price was controlled by an agreement among potential bidders applies to private sales as well as public auctions. Collusion among prospective bidders is the evil Congress intended to deal with in § 363(n).

In re Reeves, 65 F.3d 670
(8th Cir. 1995)

To be liable as an "initial transferee" for purposes of § 550(a)(2), a party must be more than a conduit, it must exercise dominion and control over the property transferred.

In re Bob's Sea Ray Boats, Inc.,
144 B.R. 451 (Bankr. D.N.D. 1992)

Debtor's prepetition transfer of assets to its principal secured creditor was not avoidable as being actually or constructively fraudulent.

In re Sherman, 67 F.3d 1348,
(8th Cir. 1995)

Chapter 7 debtors concealed transfers of properties to parents, so as to establish badge of fraud justifying avoidance of transfers as fraudulent, even though transfers were recorded as matter of public record.

In re Young, 82 F.3d 1407
(8th Cir. 1996)

Although Chapter 7 debtors' prepetition contributions to their church were avoidable because they were made for less than reasonably equivalent value, recovery of contributions by trustee would

violate the Religious Freedom Restoration Act.
Note: The Religious Freedom Restoration Act was declared unconstitutional in City of Boerne v. P.F. Flores, __ U.S. __, 1997 WL 345322 (1997).

In re Young, 82 F.3d 1407 (8th Cir. 1996)

The concept of "value" for purposes of § 548(d)(2)(A) is not restricted to hard tangible economic benefits but requires an examination of all aspects of the transaction including the benefits and burdens to the debtor, direct or indirect-including indirect economic benefits.

In re Laver, 98 F.3d 378 (8th Cir. 1996)

Absent evidence that the trustee cannot be relied upon, individual creditors do not have standing to assert claims of voidable transfers under § 548.

GUARANTY

In re Dillon Const., Inc., 922 F.2d 495 (8th Cir. 1991)

Breach of prior line of credit agreement was not material alteration of the principal obligation under subsequent note so as to discharge guarantors of the note.

HOMESTEAD

In re Peterson, 897 F.2d 935 (8th Cir. 1990)

Under North Dakota law, debtor's death eight months after filing bankruptcy petition did not constitute abandonment

In re Lippert, 113 B. R. 576,
(Bankr. D.N.D. 1990)

of homestead exemption or
cause it to lapse and
revert back to the
bankruptcy estate.

Chapter 7 debtor had not
abandoned homestead at
time petition was filed,
and thus could claim
exemption.

In re Peterson,
920 F.2d 1389
(8th Cir. 1991)

Chapter 7 debtors had
good-faith basis under
Minnesota statute for
homestead exemption
claimed for house built
on real estate owned
by one debtor's father.

In re Gerrald, 57 F.3d 652
(8th Cir. 1995)

Debtor-husband "abandoned"
his former marital home
and right to homestead
exemption when, after he
was involuntarily removed
from home pursuant to
restraining order entered
in divorce action brought
by wife, he voluntarily
entered into agreement with
wife for sale of home and
division of proceeds.

Ries v. Thiesse, 61 F.3d 631
(8th Cir. 1995)

Under Minnesota law,
abandonment results when
debtor ceases to occupy
homestead with intent to
never return or with no
intent to return to reside
on property.

In re Schriock, 192 B.R. 514
(Bankr. D.N.D. 1996)

Urban lots that were
separated, either by alley
way or by city street, from

lot on which Chapter 7 debtor's residence was located could not be included in debtor's homestead claim.

IMPLIED AND CONSTRUCTIVE CONTRACTS

Millers Nat. Ins. v. Commercial Cr. Business Loans, 893 F.2d 165 (8th Cir. 1990)

Secured lender's acquisition and retention of proceeds from bankruptcy trustee for warehouser were legally authorized and did not amount to "unjust enrichment" under North Dakota law or "conversion" of property of warehouser's surety as assignee of the North Dakota Public Service Commission.

INDEMNITY

In re Duncan, 987 F.2d 490 (8th Cir. 1993)

Summary judgment could not be granted in favor of Chapter 7 trustee on claim that purchasers, who executed indemnification agreement in connection with purchase of stock from debtors, had obligation to indemnify debtors against bank's claim under note.

INJUNCTION

In re Commonwealth Companies, Inc., 913 F.2d 518 (8th Cir. 1990)

Fact that debtor corporations had not engaged in any business activity postpetition did not render inapplicable

subparagraph excepting from stay an action by a governmental unit to enforce its police or regulatory power.

Celotex Corp. v. Edwards,
514 U.S. 300, 115 S.Ct. 1493
(1995)

Bankruptcy Courts are vested with comprehensive jurisdiction which includes power to issue injunctions in matters "related to" a Chapter 11 case.

INSURANCE

Gibralter Sav. v. Commonwealth
Land Title Ins. Co.,
905 F.2d 1203 (8th Cir. 1990)

Bankruptcy court's refusal to lift automatic stay in order to allow mortgage foreclosure was not a "loss," within meaning of title policy insuring against losses resulting from bankruptcy, in that there had not been any final judicial determination adverse to the mortgagees' interest.

Crum & Forster Managers Corp.
v. Basin Elec. Power,
911 F.2d 155 (8th Cir. 1990)

Conduct of insured's officers and directors in filing bankruptcy petition against a debtor of the insured in order to allow insured to draw on letter of credit which had been procured by debtor and was about to expire was prudent and not negligent, and thus was not a "wrongful act" within coverage of nonprofit organization liability policy.

INTEREST

In re Roso, 76 F.3d 179
(8th Cir. 1996)

A "market rate of interest" required by § 1325 does not include FmHA's subsidized interest rate. The term is the rate that would be offered to the debtor by a commercial lender.

INTERNAL REVENUE

U. S. v. Standard State Bank,
905 F.2d 185 (8th Cir. 1990)

Bankruptcy court's order dismissing Chapter 11 case after granting secured creditor, which had security interest in debtor's inventory and accounts receivable, relief from automatic stay was an order for cause under 11 U.S.C.A. § 349(b)(3), precluding reinstatement of federal tax lien on inventory and accounts receivable.

Laughlin v. U.S. I.R.S.,
912 F.2d 197 (8th Cir. 1990)

Anti-Injunction Act of Internal Revenue Code barred entry of order requiring IRS to provide more detail in notice of levy or to file adversary proceeding before filing notice of levy.

In re Bentley, 916 F.2d 431
(8th Cir. 1990)

Chapter 7 estate's liability for tax on gain from sale of corn crop and on interest earned on the sale proceeds was not abrogated by abandonment of property by Chapter 7 trustee.

INVOLUNTARY PROCEEDINGS

Crum & Forster Managers Corp.
v. Basin Elec. Power,
911 F.2d 155 (8th Cir. 1990)

Conduct of insured's officers and directors in filing bankruptcy petition against a debtor of the insured in order to allow insured to draw on letter of credit which had been procured by debtor and was about to expire was prudent and not negligent, and thus was not a "wrongful act" within coverage of nonprofit organization liability policy.

In re Rimell, 946 F.2d 1363
(8th Cir. 1991)

Bona fide dispute did not exist as to banks' claims against alleged debtors which would preclude banks from filing involuntary petitions.

JOINT BANK ACCOUNTS

Ackley State Bank v. Thielke,
920 F.2d 521
(8th Cir. 1991)

Under Iowa law, debtor had no present vested interest in joint bank accounts established by his uncle which would allow bank to set off debtor's obligations against account funds.

JUDGMENT AND PROCEDURE

In re Lull Corp., 52 F.3d 787
(8th Cir. 1995)

District court could enter summary judgment in favor of trustee in adversary proceeding to recover sums owing on unpaid intercompany account only after court had first addressed all of the

In re Jones Truck Lines, Inc.,
63 F.3d 685 (8th Cir. 1995)

affirmative defenses raised
by defendant, including
setoff defense.

Creditor's delay in filing
answer to debtor's
preference complaint was
result of excusable
neglect, warranting relief
from default judgment.

In re Ellis, 72 F.3d 628
(8th Cir. 1995)

In the context of excusable
neglect as grounds for
a jury trial in
an action alleging a
preferential transfer
between the debtor and a
third-party creditor.

In re Drewes v. Zip Feed Mills, Inc.,
119 B.R. 197 (Bankr. D.N.D. 1990)

Bankruptcy judge lacked
express or implicit
authority to conduct jury
trial in proceeding brought
by trustee against third-
party creditors.

In re Tranel, 940 F.2d 1168
(8th Cir. 1991)

Proposed action by Chapter
11 trustee against creditor
for fraud in allegedly
manipulating value of
collateral so as to gain
control of debtors"
farming and trucking
operations was core
proceeding.

Abramowitz v. Palmer,
999 F.2d 1274 (8th Cir. 1993)

Bankruptcy court had
"related to" jurisdiction
over claim against debtor's
spouse by purchaser of
debtor's dental practice for
imposition of constructive
trust over assets purchased

In re Ragar, 3 F.3d 1174
(8th Cir. 1993)

from sale proceeds.

Bankruptcy jurisdictions have criminal contempt power to the extent that they may recommend to a district court that persons be held in criminal contempt.

Keenihan v. Heritage Press
19 F.3d 1255 (8th Cir. 1994)

It is improper for bankruptcy court to assume jurisdiction over case simply because there is debt involved; in short, there must first be valid jurisdiction over matter before bankruptcy court can proceed.

Landscape Properties, Inc. v. Vogel, 46 F.3d 1415
(8th Cir. 1995)

A cause of action for damages under section 363(n) is comparable to damage claims for recovery of preferences and the claim is therefore inherently legal in nature entitling the defendants to a jury trial.

Smith v. Dowden, 47 F.3d 940
(8th Cir. 1995)

A proof of claim is revocable and a creditor may withdraw its proof of claim, the jurisdictional effect of which, is to restore the creditor's right to jury trial.

Celotex Corp. v. Edwards,
514 U.S. 300, 115 S.Ct. 1493
(1995)

Bankruptcy Courts are vested with comprehensive jurisdiction which includes power to issue injunctions

in matters "related to" a Chapter 11 case.

Specialty Mills, Inc. v. Citizens State Bank, 51 F.3d 770 (8th Cir. 1995)

Malicious prosecution, abuse of process, and tortious interference claims asserted by Chapter 7 debtor's lessee against debtor's creditor, for moving to stay lessee from removing its equipment from debtor's mill, were not within district court's "related to" jurisdiction.

In re Jones Truck Lines, Inc., 57 F.3d 642 (8th Cir. 1995)

The Negotiated Rates Act applies to bankrupt motor carriers, the U.S. Bankruptcy Code notwithstanding.

In re Goetzman, 91 F.3d 1173 (8th Cir. 1996)

Under the Rooker-Feldman doctrine, lower federal courts lack jurisdiction to engage in appellate review of state court determinations. A confirmed plan, incorporating stipulated terms, generated a dispute over the amount due and debtors filed suit in state court for specific performance with the lender filing for foreclosure. The resulting state court decision determined the amount due on the mortgage and precluded federal review.

LANDFILLS

In re Southeast Arkansas Landfill, Inc., 981 F.2d 372

Arkansas statutes limiting amount of solid waste

(8th Cir. 1993)

generated outside boundaries of regional solid waste planning district that could be accepted by landfills within district violated commerce clause.

LEASES

In re Gateway Investors, Ltd.,
113 B. R. 564 (Bankr. D.N.D. 1990)

Lessors who never received notice of lease-hold mortgagee's address were not required to obtain mortgagee's prior written consent to termination of ground leases for shopping center.

In re Modern Textile, Inc.,
900 F.2d 1184 (8th Cir. 1990)

Rejection of sublease by debtor-lessee's trustee in bankruptcy operated as a breach of lessee's legal obligation, not as the extinction thereof, and even though the Bankruptcy Code limited amount which lessor could claim against lessee's estate following the rejection, lessor could still look to the guarantors of lessee's obligations.

In re Larson, 128 B.R. 257
(Bankr. D.N.D. 1991)

Under North Dakota law, equipment leases constituted "true leases," rather than conditional sales contracts.

In re Bob's Sea Ray Boats, Inc.,
143 B.R. 229 (Bankr. D.N.D. 1992)

Bankruptcy Code provision limiting damages

recoverable from debtor by lessor for breach of real property lease limits only damages anticipated as result of debtor's failure to complete lease term.

LETTER OF CREDIT

Heartline Farms, Inc. v. Daly,
934 F.2d 985 (8th Cir. 1991)

Installment contract for sale of farmland was a "security device," rather than an "executory contract" subject to assumption or rejection.

In re Howell Enterprises, Inc.,
934 F.2d 969 (8th Cir. 1991)

Creditor's perfected security interest in debtor's accounts receivable did not attach to letter of credit.

LIEN AVOIDANCE

In re Dueis, 130 B.R. 83
(Bankr. D.N.D. 1991)

Hospital's lien for value of services rendered to Chapter 7 debtor was validly perfected.

In re Knudson, 943 F.2d 877
(8th Cir. 1991)

Trustee could not avoid postpetition security interest granted by debtors to creditor and approved by court, even if, under state law, preexisting debt could not provide adequate consideration for security interest.

In re Woods Farmers Co-op. Elevator Co., 946 F.2d 1411
(8th Cir. 1991)

North Dakota statutory lien on proceeds of grain deposited at debtor's warehouse could not be avoided under Bankruptcy Code provision permitting

trustee to avoid a statutory lien to the extent the lien is unenforceable against a bona fide purchaser.

In re Nies, 183 B.R. 866
(Bankr. D.N.D. 1995)

Chapter 7 trustee could not avoid mortgagee's security interest in debtors' real property, even if recorded mortgage did not meet requirements for recordation under North Dakota law.

LIENS

In re Woods Farmers Co-op. Elevator Co., 107 B. R. 689
(Bankr. D.N.D. 1989)

North Dakota receipt holder's warehouse was avoidable statutory lien.

In re Strom, 921 F.2d 836
(8th Cir. 1991)

Judgment creditor's registration of notice of lis pendens on title to registered property was insufficient to create lien on the property under Minnesota law, where judgment creditor had failed to file certified copy of judgment.

Johnson v. Home State Bank,
501 U.S. 78, 111 S. Ct. 2150
(1991)

A mortgage lien securing an obligation for which a debtor's personal liability has been discharged in a Chap. 7 liquidation is a "claim" within the meaning of § 101(5) and is subject to inclusion in an approved Chap. 13 reorganization Plan.

Congress intended in § 101(5) to incorporate the broadest available definition of "claim", see Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. __. ... 904 F. 2d 563, reversed and remanded.

In re Dueis, 130 B. R. 83
(Bankr. D.N.D. 1991)

Hospital's lien for value of services rendered to Chapter 7 debtor was validly perfected.

In re Woods Farmers Co-op. Elevator Co., 946 F.2d 1411
(8th Cir. 1991)

North Dakota statutory lien on proceeds of grain deposited at debtor's warehouse could not be avoided under Bankruptcy Code provision permitting trustee to avoid a statutory lien to the extent the lien is unenforceable against a bona fide purchaser. validly perfected.

In re Da-Sota Elevator Co.,
135 B.R. 917 (Bankr. D.N.D.1991)

"Lien" was created in garnishment funds under North Dakota law upon service of garnishment summons and disclosure statement, which was outside of requisite 90-day preference period, and thus, check from garnishee, issued to both Chapter 7 debtor and garnishor within 90-day preference period, and endorsed by debtor to garnishor within

preference period, was not avoidable as preference.

In re Branson Mall, Inc.,
970 F.2d 456 (8th Cir. 1992)

Architect's rendering services to developer in connection with construction and improvement of buildings in Missouri was "practice of architecture," within meaning of Missouri statutory lien law, requiring architect to be registered in order to enforce lien.

Mead v. Mead, 974 F.2d 990
(8th Cir. 1992)

When lien, which Chapter 13 debtor's ex-husband had been granted in divorce decree and which had been released by quitclaim deed, was reinstated on grounds of fraud, debtor could not avoid that lien on her homestead under Bankruptcy Code's lien avoidance provision relying on Farrey v. Sanderfoot.

In re Fairfield Communities, Inc.,
990 F.2d 1075 (8th Cir. 1993)

Contractors, which altered land by hauling in 400 tons of sand and gravel to shape each green on golf course and created cart paths, did work that "improved the realty" and thus, were entitled to mechanics' liens under Tennessee law.

U.S. v. Olson, 4 F.3d 562
(8th Cir. 1993)

Attorneys cannot claim
an equitable lien or
judicial lien in funds
not in possession absent
a state statute providing
for the same.

Harmon v. U.S., Acting Through Farmers
Home Admin., 101 F.3d 574 (8th Cir. 1996)

Chapter 12 permits debtor
to "strip down" undersecured
creditor's lien to value of
collateral.

LIMITATION OF ACTIONS

U.S. v. Tri-State Ins. Co.
of Minnesota, 946 F.2d 581
(8th Cir. 1991)

Anonymous tip to
representatives of
Commodity Credit Corp.,
indicating that a public
grain warehouseman had
overestimated its net
worth, did not trigger
running of six-year
limitations period on
Government's claims
against sureties of
bankrupt warehouse.

McCuskey v. Central Trailer
Services, Ltd., 37 F.3d 1329
(8th Cir. 1994)

Statute of limitations
on preference avoidance
claim ran from date of
Chapter 11 trustee's
appointment, not from
Chapter 7 trustee's
appointment following
conversion of case.

LIQUIDATION

In re Eberhart Moving &
Storage, Ltd., 120 B. R. 121
(Bankr. D.N.D. 1990)

Involuntary Chapter 7
petition was filed in
bad faith.

MINES AND MINERALS

In re Great Plains Petroleum, Inc., 113 B. R. 570 (Bankr. D.N.D. 1990)

Noninterest operator of oil and salt water disposal wells was not liable to working interest owner for breach of operating agreement.

MORTGAGES

Page v. City of Duluth, 945 F.2d 241 (8th Cir. 1991)

Mortgagee which bid entire amount of mortgage debt at foreclosure sale was barred, under Minnesota's anti-deficiency statute, from claiming interest in the proceeds from sale of mortgagor's tenant's property.

In re Larson, 979 F.2d 625 (8th Cir. 1992)

Mortgagee's filing of addendum for North Dakota "collateral real estate mortgage" did not violate automatic stay.

In re Nies, 183 B.R. 866 (Bankr. D.N.D. 1995)

Chapter 7 trustee could not avoid mortgagee's security interest in debtors' real property, even if recorded mortgage did not meet requirements for recordation under North Dakota law.

In re Oxford Development, Ltd., 67 F.3d 683 (8th Cir. 1995)

State law controls foreclosure even where it takes place with approval of federal bankruptcy court. Where equitable, the bankruptcy court should enforce federal and state doctrines of marshaling of assets.

NEW TRIAL

In re Higginbotham, 719 F.2d 1130
(8th Cir. 1991)

Debtor waived right to new trial, after judge hearing evidence died and successor judge was appointed, by failing to object to successor judge's procedure in deciding case.

NOTICE

In re Peterson, 929 F.2d 385
(8th Cir. 1991)

Bank received actual notice of amended exemption schedule claiming homestead exemption when bank received copy of trustee's objection to the amended schedule, for purpose of determining timeliness of bank's objection.

Pioneer Inv. Services Co. v. Brunswick Assoc., 507 U.S. 380,
(1993)

An attorneys inadvertent failure to file a proof 113 S. Ct. 1489 of claim by the bar date may constitute "excusable neglect" within the meaning of Rule 9006(b)(1). The Supreme Court discusses excusable neglect under Rule 6(b) Fed. R. Civ. P. and Rule 9006 of Fed. R. Bankr. Proc.

In re Miller, 16 F.3d 240
(8th Cir. 1994)

Chapter 12 debtors' mailing of confirmation hearing to national office of FmHA, rather than to local office specified on FmHA's proof of claim, entitled FmHA to order setting aside confirmed plan.

OIL AND GAS

Moore & Munger Marketing
and Refining, Inc. v. Hawkins,
962 F.2d 806 (8th Cir. 1992)

Lessee of Chapter 7
debtor's oil pipeline
system, seeking a
determination that it
did not owe the full
contract price for
purchase of "division
orders," was not entitled
to adjustment in contract
price.

PARTNERSHIP

In re 9221 Associates,
973 F.2d 671 (8th Cir. 1992)

Note and deed of trust
given by debtor's general
partner were unauthorized
and not enforceable against
debtor.

PENSIONS

In re Vickers,
954 F.2d 1426 (8th Cir. 1992)

ERISA does not preempt
Missouri exemption statute
which permits debtors to
exempt reasonably necessary
pension benefits.

In re Conlan, 974 F.2d 88
(8th Cir. 1992)

Anti-alienation provision
in pension plans
constituted restriction on
transfer enforceable under
applicable nonbankruptcy
law, allowing pension
plans to be excluded from
estate... follows Patterson
v. Shumate and In re Green.

PLEADING

Reiter v. Cooper,
507 U.S. 258,
113 S.Ct. 1213 (1993)

Rules 8 and 54 are fully
applicable in adversary
proceedings by Bankruptcy
Rule 7008 and 7054 and an

Adversary Proceeding
defendant can meet a
plaintiff-debtor claim
with a counterclaim
arising out of the same
transaction at least
to the extent of
recoupment.

POST-PETITION TRANSACTIONS

In re Russell, 927 F.2d 413
(8th Cir. 1991)

Debtor-in-possession's
election to carry forward
net operating losses was an
unauthorized post-petition
transfer, voidable by
trustee if not in the
ordinary course of
business.

Stoebner v. Murray, 91 F.3d 1091
(8th Cir. 1996)

Collateral estoppel did not
bar litigation of a turnover
order because none of the
issues concerning the origin
of the funds had been actually
litigated or determined by a
prior decision.

PREFERENCES

In re Roehrich, 107 B. R. 675
(Bankr. D.N.D. 1989)

For preferential transfer
purposes, presentment and
honor of checks delivered
outside preference period
but cashed inside period
was timely.

In re Muncrief, 900 F.2d 1220,
(8th Cir. 1990)

Finding that debtor was
insolvent at time he made
certain transfers was not
clearly erroneous, for
purposes of ruling on
propriety of bankruptcy
court's denial of trustee's
petitions to set aside

In re Lewellyn & Co., Inc.,
929 F.2d 424 (8th Cir. 1991)

debtor's allegedly preferential and fraudulent conveyances.

Debtor's transfer of stock to organization in lieu of timely cash payment of his \$8 million obligation came within the contemporaneous exchange for new value exception to avoidance of preferential transfers.

Matter of Kroh Bros. Development Co., 930 F.2d 648
(8th Cir. 1991)

Preferential "transfer" occurs, for purposes of "new value" exception to trustee's preference-avoiding powers, immediately upon delivery of check, without regard to when it is paid.

Lovett v. St. Johnsbury Trucking,
931 F.2d 494 (8th Cir. 1991)

Payments made by debtor to common carrier during preference period came within the ordinary course of business exception to trustee's power to avoid preferential transfers.

In re Willaert, 944 F.2d 463
(8th Cir. 1991)

Mere fact that mortgaged property had been sold to good-faith purchaser did not preclude avoidance of mortgage as preferential, in order to permit trustee to recover sale proceeds from mortgagee.

Union Bank v. Wolas,
502 U.S. 151,
112 S. Ct. 527 (1991)

Payments on long-term debt, as well as those on short-term debt, may qualify

In re Da-Sota Elevator Co.,
135 B.R. 873 (Bankr. D.N.D. 1991)

for ordinary course of business exception to trustee's power to avoid preferential transfers.

Transfer of Chapter 7 debtor's property to garnishor occurred upon service of garnishment summons and disclosure statement, rather than upon debtor's endorsement of check issued to debtor and garnishor by garnishee, for preference purposes.

Barnhill v. Johnson, 503 U.S. 393,
112 S. Ct. 1386 (1992)

The United States Supreme Court has ruled that for preference purposes a transfer made by check is deemed to occur on the day the check is honored.

In re Vatnsdal, 139 B.R. 471
(Bankr. D.N.D. 1991)

Mortgage granted by debtor to brother at time brother made loan, but not recorded until more than ten months later, did not fall within substantially contemporaneous exchange for new value exception to avoidability of preferences.

In re Interior Wood Products Co.,
986 F.2d 228 (8th Cir. 1993)

Buyer's prepetition payment of Chapter 7 debtor's debt to unsecured creditors as part of buyer's acquisition of debtor's assets constituted transfer of debtor's property, and, thus, the payment could be avoided as preferential.

In re U.S.A. Inns of Eureka
Springs, Arkansas, Inc.,
9 F.3d 680 (8th Cir. 1994)

Focus of requirement that payment be made according to ordinary business terms in relevant industry, for coming within ordinary business exception to statute avoiding preferential transfers, is on whether terms between parties were particularly unusual in relevant industry; evidence of prevailing practice among similarly situated members of industry facing same or similar problems is sufficient to satisfy transferee's burden of proof. Bankr.Code 11 USCA § 547(c)(2)(C).

Harstad v. First American Bank,
39 F.3d 898 (8th Cir. 1994)

A Chap. 11 debtor may not motion a post-confirmation preference action unless the plan itself provides for the retention and enforcement of [that claim or intent] by the debtor and it is clear that any recovery will benefit creditors.

In re Jones Truck Lines, Inc. v.
Full Service Leasing Corp.
63 F.3d 685 (8th Cir. 1995)

Jury instruction on new value exception to preference avoidance was not error, even though jury was not told to consider benefit conferred by debtor-common carrier's continued use of leased equipment.

Southern Technical College, Inc.

Chapter 11 debtor-college

v. Hood, 89 F.3d 1381 (8th Cir. 1996)

received "new value" within meaning of subsequent advance exception to trustee's preference avoidance power when it continued to use leased properties for nearly two months without paying rent, and therefore prior late rent payments could not be avoided to extent that new value remained unsecured and unpaid for.

In re Laver, 98F.3d 378
(8th Cir. 1996)

Absent evidence that the trustee cannot be relied upon, individual creditors do not have standings to assert claims of voidable transfers under § 548.

Laws v. United Missouri Bank of Kansas City, N.A., 98 F.3d 1047
(8th Cir. 1996)

A bank's advance on uncollected deposits is a service decision, not a credit decision, with the bank acting as a conduit for depositor's financial transactions, not as a creditor. Therefore routine advances against uncollected deposits do not give rise to a preference.

In re Beasley, 102 F.3d 334
(8th Cir. 1996) affirmed ___ U.S.
___ 1998 WL 7076

State relation-back statutes are inapplicable to preference-avoidance analysis under § 547(c)(3)(B).

PRIORITY

In re Northwest Financial Exp., Inc., 950 F.2d 561
(8th Cir. 1991)

Claims of stores which sold Chapter 11 debtor's private money orders to customers, and which obtained assignments from

customers subsequent to dishonor of money orders, were not entitled to priority status under statute.

In re Larsen, 59 F.3d 783
(8th Cir. 1995)

Statute according priority of distribution to administrative expense claims accorded priority only to claims allowed in pending Chapter 7 case, not in cases dismissed almost three years earlier.

In re L. J. O'Neill Shoe Co.,
64 F.3d 1146 (8th Cir. 1995)

Construing § 503(b)(1)(B) (i) and 507(a)(7)(iii), court holds that portions of state tax claims relating to debtors pre-petition corporate income were not administrative expenses, but were entitled only to seventh priority as taxes not assessed pre-petition but assessable post petition. Subsection (iii) addresses only pre-petition taxable activity or events.

In re HLM Corp., 62 F.3d 224
(8th Cir. 1995)

Unpaid prepetition premiums under Minnesota workers' compensation scheme were not "contributions to an employee benefit plan," entitled to priority status under § 507(a)(4).

In re Mickelson, 192 B.R. 516
(Bankr. D.N.D. 1996)*

Even if debtor-seed company was grain storage creditor-producers who sold grain to seed company

*affirmed 205 B.R. 190 (D.N.D. 1997)

United States v. Reorganized
CF&I Fabricators of Utah,
518 U.S. 213; 116 S.Ct. 2106
(1996)

In re Juvenile Shoe Corp. of
America, 99 F.3d 898
(8th Cir. 1996)

PROCEDURE

In re Duncan, 987 F.2d 490
(8th Cir. 1993)

were not entitled to
priority status because
creditors did not retain
title to grain.

The exaction tax imposed
under 26 USCA § 4971
on accumulated pensions
funding deficiencies is
not an "excise tax"
entitled to priority under
§ 507. It is an ordinary
unsecured claim.

Whether an IRS assessment is
"excise tax" or "penalty"
requires looking beyond the
label to how it operates. Here
court defines "tax", "excise tax"
and "penalty" for priority
purposes and determines that a
flat tax levied on surplus funds
remaining after employer
liquidated its overfunded
pension plan was an "excise tax"
entitled to a seventh priority.

Summary judgment could
not be granted in favor
of Chapter 7 trustee on
claim that purchasers,
who executed indemnifi-
cation agreement in
connection with purchase
of stock from debtors,
had obligation to
indemnify debtors against
bank's claim under note.

In re Mathiason, 16 F.3d 234
(8th Cir. 1994)

When an objection to claim is joined with a request that the court "determine the status" of the claim the litigator becomes an adversary proceeding and all issues relative to claim validity must be raised or will be regarded as waived.

In re Kjellsen, 53 F.3d 944
(8th Cir. 1995)

Debtor's daughter who had been given durable power of attorney could not file Chapter 13 petition on debtor's behalf after guardian for debtor's estate was appointed.

In re Martwick, 60 F.3d 482
(8th Cir. 1995)

Denial of Chapter 11 debtors' motion for continuance of expedited hearing on secured creditor's motions for relief from automatic stay and to dismiss case was not abuse of discretion.

In re Jones Truck Lines, Inc.,
63 F.3d 685 (8th Cir. 1995)

Creditor's delay in filing answer to debtor's preference complaint was result of excusable neglect, warranting relief from default judgment.

Veltman v. Whetzal, 99 F.3d 517
(8th Cir. 1996)

Bankruptcy court order authorizing Chapter 7 trustee to sell estate property free and clear of all liens, encumbrances, and interests provided co-owners of estate property with

sufficient notice that property was to be sold free and clear of their interest.

PROCESS

In re Peterson, 929 F.2d 385
(8th Cir. 1991)

Bank received actual notice of amended exemption schedule claiming homestead exemption when bank received copy of trustee's objection to the amended schedule, for purpose of determining timeliness of bank's objection.

Pioneer Inv. Services Co. v. Brunswick Assoc., 507 U.S. 380, 113 S. Ct. 1489 (1993)

An attorneys inadvertent failure to file a proof of claim by the bar date may constitute "excusable neglect" within the meaning of Rule 9006(b)(1). The Supreme Court discusses excusable neglect under Rule 6(b) Fed. R. Civ. P. and Rule 9006 of Fed. R. Bankr. Proc.

In re Brucker, 150 B.R. 746
(Bankr. D.N.D. 1993)

Use of mails did not give creditor additional three days in which to file nondischargeability complaint.

In re Harlow Fay, Inc.,
993 F.2d 1351 (8th Cir. 1993)

Chapter 11 debtor's counsel's financial pressures, relocation and staff reduction did not establish the excusable neglect required for granting extension of time for filing appellate

brief on appeal from
dismissal of bankruptcy
petition.

In re Miller, 16 F.3d 240
(8th Cir. 1994)

Chapter 12 debtors" mailing
of notice of confirmation
hearing to national office
of FmHA, rather than to
local office specified on
FmHA's proof of claim,
entitled FmHA to order
setting aside confirmed
plan.

PROOF OF CLAIM

In re Gran, 964 F.2d 822
(8th Cir. 1992)

When taxpayer introduces
evidence that refutes
government's proof of
claim in bankruptcy
proceeding, any burden
shifting to government of
coming forward with
relevant evidence involves
only those elements that
taxpayer has challenged.
Bankr. Code, 11 U.S.C.A.
§ 502.

In re Pioneer Inv. Services v.
Brunswick Associates,
113 S. Ct. 1489 (1993)

Attorney's inadvertent
failure to file a proof
of claim by the bar date
can constitute "excusable
neglect."

PROPERTY OF ESTATE

Ackley State Bank v. Thielke,
920 F.2d 521 (8th Cir. 1991)

Under Iowa law, debtor
had no present vested
interest in joint bank
accounts established by
his uncle which would
allow bank to set off
debtor's obligations
against account funds.

In re Da-Sota Elevator Co.,
939 F.2d 654 (8th Cir. 1991)

Debtor's elevator maintenance contracts were property of the estate and could not be transferred to insiders for less than reasonably equivalent value.

In re Garner, 952 F.2d 232
(8th Cir. 1991)

Stock owned by debtor and non-debtor spouse, who were joint obligors on a debt, as tenants by the entirety was part of the debtor's bankruptcy estate value.

Patterson v. Shumate, 504 U.S. 753
112 S.Ct. 2242 (1992)

The U.S. Supreme Court has held that a Chapter 7 debtor's interest in an ERISA-qualified plan was excluded from the bankruptcy estate under § 541(c)(2). Section 541(c)(2) provides that a debtor's bankruptcy estate does not include the debtor's beneficial interest in a trust if the trust is subject to transfer restrictions that are enforceable under "applicable nonbankruptcy law."

In re Green, 967 F.2d 1216
(8th Cir. 1992)

Anti-alienation provision required for ERISA qualification constitutes enforceable transfer restriction for purposes of Bankruptcy Code's exclusion of property from estate.
(Follows Patterson v.

In re Trout, 146 B.R. 823
(Bankr. D.N.D. 1992)

In re Larson, 147 B.R. 39
(Bankr. D.N.D. 1992)

Evans v. FDIC, 981 F.2d 978
(8th Cir. 1993)

Security Bank of Marshalltown,
Iowa v. Neiman, 1 F.3d 687
(8th Cir. 1993)

Drewes v. Schonteich,

Schumate and overrules
Graham 726 F.2d 1268.)

Under Montana law, Chapter 7 trustee's constructive notice of debtor's former wife's interest in property when she was in sole possession of premises precluded trustee from using strong-arm powers as bona fide purchaser to avoid debtor's prepetition transfer by quitclaim deed of his interest to former wife.

Stock options issued to debtor as remuneration for his involvement in corporation for coming fiscal year constituted postpetition wages excluded from property of estate.

Any right of debtor to interpleaded fund, representing surplus remaining at conclusion of bankruptcy case, was subordinate to other claims.

The Chapter 13 estate continues to exist as a legal entity after confirmation even if, pursuant to § 1327, property of the estate has vested in the debtor.

Agreements under which

31 F.3d 674 (8th Cir. 1994)

settlor gave cash and stock to charitable institution that agreed to pay settlor's caretaker monthly payments which were non-assignable and terminated at caretaker's death complied with California spendthrift trust law, and, thus, were excluded from caretaker's bankruptcy estate.

Whetzal v. Alderson, 32 F.3d 1302, (8th Cir. 1994)

Chapter 7 debtor-former federal employee's right to receive lump-sum retirement benefits did not make retirement benefits estate property.

In re Markmueller, 51 F.3d 775 (8th Cir. 1995)

Trust assets were includable in settlor's Chapter 7 estate because spendthrift provisions were invalid under Missouri law.

In re Central Arkansas Broadcasting Co., 68 F.3d 213 (8th Cir. 1995)

Scope of § 541(a)(1) is very broad and Chapter 7 debtor's radio station operating license was estate property, even though debtor did not own license, because license could be transferred by debtor for consideration with FCC approval.

In re Rine & Rine Auctioneers, Inc., 74 F.3d 848 (8th Cir. 1996)

Under Nebraska law, because Chapter 7 debtor-auctioneer was not agent of its customer once auction proceeds were property of debtor's bankruptcy estate.

In re Rine & Rine Auctioneers, Inc., 74 F.3d 854 (8th Cir. 1996)

Under Nebraska law, because Chapter 7 debtor-auctioneer was not customer's agent at time auction proceeds were deposited in debtor's bank account and then paid to customer and bank, proceeds were estate property that trustee could recover as preferences.

In re Fairfield Pagosa, Inc., 97 F.3d 247 (8th Cir. 1996)

Chapter 11 debtor-developer, not property owners' association owned equitable interest in development's recreational amenities.

RECEIVERS

Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc., 999 F.2d 314 (8th Cir. 1993)

Judgment debtor's pattern of willful non-disclosure of assets, false disclosures, and transfer to avoid tenacious judgment creditor warranted appointment of receiver for the judgment debtor.

RECLAMATION

In re Pester Refining Co., 964 F.2d 842 (8th Cir. 1992)

Reclaiming seller is entitled to more than "garage sale" price that its goods would bring if resold not in the ordinary course of business, and may have right to reclaim at full invoice price of goods.

REMAND

In re Karlen, 934 F.2d 184 (8th Cir. 1991)

On remand to bankruptcy court following district

REORGANIZATION

In re Toibb, 902 F.2d 737
(8th Cir. 1990)

Toibb v. Radloff,
501 U.S. 157, 111 S. Ct. 2197
(1991)

decision that judgment creditor was entitled to satisfy its judgment from time investor certificates, bankruptcy court had no authority other than to direct surrender of the certificates.

Bankruptcy court could sua sponte dismiss Chapter 11 petition on ground that debtor was not engaged in an ongoing business.

Held: The Bankruptcy Code's plain language permits individual debtors not engaged in business to file for relief under Chap. 11. Toibb is a debtor within the meaning of sec. 109(d), which provides that "a person who may be a debtor broker, and a railroad may be a debtor under chap. 11." He is a person who may be a Chap. 7 debtor, since only railroads and various financial and insurance institutions are excluded from Chapter 7's coverage, and § 109(d) makes Chap. 11 available to all entities eligible for Chap. 7 protection, Chap. 11's structure and legislative history indicate that it contains no ongoing business requirement for Chap. 11 reorganization; and there is no basis, including

underlying policy considerations, for imposing one.
902 F.2d 14, reversed.

In re Kerr, 908 F.2d 400,
(8th Cir. 1990)

Chapter 11 plan which allowed debtors to retain valuable real estate while paying far less than what was owed to creditors was "unfair to creditors: and could not be confirmed.

In re Anderson, 913 F.2d 530
(8th Cir. 1990)

Debtors did not make sufficient showing of possibility for successful reorganization, once creditor established debtor"s lack of equity in collateral property, to avoid lifting of stay.

In re Tranel, 940 F.2d 1168
(8th Cir. 1991)

Proposed action by Chapter 11 trustee against creditor for fraud in allegedly manipulating value of collateral so as to gain control of debtors" farming and trucking operations was core proceeding.

In re Roso, 76 F.3d 179
(8th Cir. 1996)

A "market rate of interest" required by § 1325 does not include FmHA"s subsidized interest rate. The term is the rate that would be offered to the debtor by a commercial lender.

In re D & P Partnership,
91 F.3d 1072

Once a plan has been confirmed, bankruptcy

(8th Cir. 1996)

court jurisdiction is explicitly retained for interpretation and administration.

RES JUDICATA

Lane v. Peterson,
899 F.2d 737
(8th Cir. 1990)

Adverse judgment in Chapter 11 debtors' suit against bankruptcy panelists, for breach of fiduciary duty under state law by acquiring debtors' stock in their company and failing to advise debtors of third parties' interest in purchasing the company, was res judicata barring subsequent suit against panelists for violation of various federal laws arising out of same conduct.

Armstrong v. Norwest Bank, Minneapolis, N.A., 964 F.2d 797 (8th Cir. 1992)

Chapter 7 trustee, following conversion of case from Chapter 11, was bound by acts of debtor-in-possession in entering into stipulations with regard to cash collateral and by decisions of courts regarding such stipulations.

RESTITUTION

U. S. v. Vetter, 895 F.2d 456,
(8th Cir. 1990)

Restitution order of federal court in criminal prosecution was exempt from discharge pursuant to § 523(a)(7).

In re Knodle, 187 B.R. 660
(Bankr. D.N.D. 1995)

Criminal restitution obligation imposed

as condition of Chapter 7 debtor's criminal sentence came within discharge exception for fine, penalty, or forfeiture payable to governmental unit.

SANCTIONS

In re Trout, 108 B.R. 235
(Bankr. D.N.D. 1989)

Debtor's counsel would be sanctioned for failure to disclose complete settlement terms between debtor and creditor.

SECURED TRANSACTIONS

In re Woods Farmers Co-op Elevator Co., 107 B. R. 678
(Bankr. D.N.D. 1989)

Secured creditors interest in and to proceeds of grain stored in debtor's warehouse was invalid to extent that commingled fungible grains were needed to satisfy outstanding warehouse receipt holders.

In re Chapman, 113 B. R. 561,
(Bankr. D.N.D. 1990)

Creditor's possession of manufacturer's statement of origin was insufficient under North Dakota law to perfect security interest in automobile.

In re Koppinger, 113 B. R. 588,
(Bankr. D.N.D. 1990)

Perfected security interest in accounts receivable for sale of motor fuel was not broad enough to encompass amounts representing fuel taxes.

In re Knudson, 929 F.2d 1280
(8th Cir. 1991)

Under North Dakota law financing statements

listing corporations name but not names of individual debtors was insufficient to perfect any security interest that might have been created in debtor's checking account.

In re Holiday Intervals, Inc.,
931 F.2d 500 (8th Cir. 1991)

Document containing both land sale installment contract and note was not "instrument" under UCC section 9-105, so that a security interest could be perfected only by filing a UCC financing statement, rather than by mere possession.

In re Larson, 128 B.R. 257
(Bankr. D.N.D. 1991)

Under North Dakota law, equipment leases constituted "true leases," rather than conditional sales contracts.

In re Quality Processing, Inc.,
9 F.3d 1360 (8th Cir. 1994)

Lack of identification of Chapter 11 debtor's beans to sales contracts did not preclude action against creditor for tortious interference with the contract.

Harmon v. U.S., Acting Through Farmers Home Admin., 101 F.3d 574 (8th Cir. 1996)

Chapter 12 permits debtor to "strip down" undersecured creditor's lien to value of collateral.

In re Beasley, 102 F.3d 334 (8th Cir. 1996)

State relation-back statutes are inapplicable to preference-avoidance analysis under § 547(c)(3)(B).

SECURITY AGREEMENT

Heartline Farms, Inc. v. Daly,
934 F.2d 985 (8th Cir. 1991)

Installment contract for sale of farmland was a "security device," rather than an "executory contract" subject to assumption or rejection.

SETOFF

Small Business Administration v. Rhinehart, 887 F.2d 165
(8th Cir. 1989)

Bankruptcy Code provision governing waiver of sovereign immunity did not authorize award of punitive damages against the United States for willful violation of automatic stay.

U. S. v. McPeck, 910 F.2d 509,
(8th Cir. 1990)

Where government's claim exceeded debtor's damages from government's violation of automatic stay, proper procedure was to offset debtor's recovery against government's claim.

In re Knudson,
929 F.2d 1280
(8th Cir. 1991)

Entire amount of bank's setoff of balance in debtors' checking account against amount of note which had been declared to be in default during preference period was not avoidable, but instead bank could set off only the amount that would have been available to it as of 90 days before bankruptcy filing.

In re Lund, 136 B.R. 237
(Bankr. D.N.D. 1990)

Requisite mutuality existed, for setoff

purposes, between
Commodity Credit
Corporation's obligation
to debtors and debtors"
prepetition debt for
overpayment.

In re Apex Oil Co.,
975 F.2d 1365 (8th Cir. 1992)

Under Texas law, notices
stamped on invoices
indicating creditor's
security interest provided
account debtor with notice
of assignment of accounts
receivable by creditor,
and debtor could not set
off amounts it owed to
creditor against amounts
creditor owed to debtor
on different contracts
unless creditor was
estopped from recovering
under the invoices.

Reiter v. Cooper, 507 U.S. 258,
113 S. Ct. 1213 (1993)

Rules 8 and 54 are fully
applicable in adversary
proceedings by Bankruptcy
Rule 7008 and 7054 and an
adversary proceeding
defendant can meet a
plaintiff-debtor claim
with a counterclaim
arising out of the same
transaction at least to
the extent of recoupment.

U.S. Through ASCS v. Gerth,
991 F.2d 1428 (8th Cir. 1993)

Agricultural Stabilization
and Conservation Service
was entitled to set off its
debt to Chapter 12 debtor
for conservation reserve
program payments against
debtor's obligation to
Government for agricultural

U.S. on Behalf of U.S. Postal Service v. Dewey Freight System, Inc., 31 F.3d 620 (8th Cir. 1994)

price support overpayments.

Unlike setoff, recoupment is appropriate only where both debts arise out of a single integrated transaction so that it would be inequitable for a debtor to enjoy benefits of that transaction without also meeting its obligations. United States Postal Service was not entitled to recoup damages incurred when Chapter 11 debtor refused to perform executory contracts against sums that the USPS owed the debtor for postpetition trucking services under the contracts.

In re Kalenze, 175 B.R. 35 (Bankr. D.N.D. 1994)

IRS & Federal Crop Ins. Corp. stood in "mutual capacity" as required for setoff of debtors tax refund against insurance premiums owed by debtor, even though they were different agencies.

Citizens Bank of Maryland v. Strumpf __ U.S. __,

An administrative freeze does not violate the 116 S. Ct. 286 (1995) automatic stay and is not a setoff within the meaning of §362(a)(7).

SETTLEMENTS

In re New Concept Housing, Inc., 951 F.2d 932 (8th Cir. 1991)

Bankruptcy court's approval of settlement of creditor's claim was not an abuse of

discretion, even though debtor had not been given notice of hearing on trustee's objection to claim.

JCA Partnership v. Wenzel Plumbing & Heating, Inc.
978 F.2d 1056 (8th Cir. 1992)

Settlement agreement approved by bankruptcy court in fraudulent transfer proceeding brought by purchaser against vendor's principal did not bar rescission and restitution claims.

SOVEREIGN IMMUNITY

United States v. Nordic Village, Inc., 503 U.S. 30, 112 S. Ct. 1011 (1992)

Section 106(c) does not waive the United States' from sovereign immunity an action seeking monetary recovery in bankruptcy.

STAY

Small Business Administration v. Rhinehart, 887 F.2d 165 (8th Cir. 1989)

Bankruptcy Code provision governing waiver of sovereign immunity did not authorize award of punitive damages against the United States for willful violation of automatic stay.

Hazen First State Bank v. Speight, 888 F.2d 574 (8th Cir. 1989)

Expiration of subordination agreement between two creditors did not fall within automatic stay provision of the Bankruptcy Code, and thus, the agreement's expiration was not tolled by the automatic stay.

In re Knaus, 889 F.2d 773
(8th Cir. 1989)

Creditor's failure to voluntarily turn over property taken lawfully prepetition constituted a violation of the automatic stay.

U.S. v. McPeck, 910 F.2d 509
(8th Cir. 1990)

Where government's claim exceeded debtor's damages from government's violation of automatic stay, proper procedure was to offset debtor's recovery against government's claim.

In re Commonwealth Companies, Inc.,
913 F.2d 518 (8th Cir. 1990)

Fact that debtor corporations had not engaged in any business activity postpetition did not render inapplicable subparagraph excepting from stay an action by a governmental unit to enforce its police or regulatory power.

In re Anderson, 913 F.2d 530
(8th Cir. 1990)

Debtors did not make sufficient showing of possibility for successful reorganization, once creditor established debtor's lack of equity in collateral property, to avoid lifting of stay.

In re Fenske, 96 B.R. 244
(Bankr. D.N.D. 1988)

Once a creditor is shown there to be no equity, it is for the debtor to prove there is a reasonable possibility of a successful reorganization within a reasonable time. Although a less detailed showing is

normally required in the early stages of a case, a debtor none-the-less must be prepared to meet the movant's evidence.

Erickson v. Polk, 921 F.2d 200
(8th Cir. 1991)

Lessor of unimproved farmland did not violate automatic stay when it retook possession of land following post-petition expiration of lease.

Lovett v. Honeywell, Inc.,
930 F.2d 625 (8th Cir. 1991)

"Egregious circumstances" did not exist sufficient to support award of punitive damages for shipper's alleged knowing violation of automatic stay.

See also:
U.S. v. Ketelsen, 880 F.2d 990
(8th Cir. 1991).

In re Wieseler, 934 F.2d 965
(8th Cir. 1991)

Bankruptcy court abused its discretion by vacating order lifting automatic stay after debtors failed to honor a settlement agreement with creditor requiring payment of debts in installments.

In re Hampton Corp., Inc.,
126 B.R. 61 (Bankr. D.N.D. 1991)

Resolution Trust Corp., as receiver for creditor, was not entitled to stay debtor's motion for use of rents in order to obtain substitute counsel, in light of irreparable harm to debtor.

Bd. of Governors of the
Fed. Reserve Sys. v. McCorp
Fin, Inc., 50 U.S. 32,
112 S. Ct. 459 (1991)

The language of 12 U.S.C.
§ 1818(i)(1), which
provides that no court
shall have jurisdiction
to affect the issuance or
enforcement of any
administrative notice or
order, is not qualified
or superseded by the
automatic stay provision
found in section 362 of
the Bankruptcy Code. The
limitations found in
Sections 362(a)(3) and
362(a)(6) have no effect
on nonfinal, ongoing
administrative proceedings.
Furthermore, section 362
(b)(4) expressly provides
that the automatic stay
will not reach proceedings
to enforce a governmental
unit's police or regulatory
power.

Board of Governors v. McCorp
Financial, 50 U.S. 32,
112 S.Ct. 459 (1991)

Automatic stay did not
authorize district court
to enjoin Board of
Governors of the Federal
Reserve System from
prosecuting administrative
proceedings against Chapter
11 debtor, a bank holding
company.

Brown v. Armstrong,
949 F.2d 1007
(8th Cir. 1991)

Automatic stay does not
apply to judicial
proceedings initiated by
the debtor.

Croyden Associates v.
Alleco, Inc., 969 F.2d 675
(8th Cir. 1992)

The stay required under
section 362 extends only
to claims against the

debtor and is not available to non-debtor codefendants, even if they are in a similar legal or factual nexus with the debtor.

U.S. through Farmers Home Admin. v. Nelson, 969 F.2d 626 (8th Cir. 1992)

Stay is not violated by a post-petition letter sent by a codebtor (FmHA) advising a debtor of various loan options and remedies.

Farley v. Henson, 2 F.3d 273 (8th Cir. 1993)

Appeal of state court judgment brought by debtor is stayed by bankruptcy and only bankruptcy court may grant relief from stay.

Citizens Bank of Maryland v. Strumpf 516 U.S. 16 116 S.Ct. 286 (1995)

An administrative freeze does not violate the automatic stay and is not a setoff within the meaning of § 362(a)(7).

STIPULATIONS

In re Trout, 123 B.R. 333, (Bankr. D.N.D. 1990)

Use of cash collateral satisfied statutory requirements, and stipulations for use of cash collateral were valid and binding, entitling creditor whose cash collateral was used to lien on post-petition collateral.

In re Edwards, 924 F.2d 798 (8th Cir. 1991)

Stipulation as to value of Chapter 12 debtors" property was not enforceable against

mortgagee without debtors paying the consideration required by agreement under which one debtor's mother would purchase mortgage collateral.

In re Wieseler, 934 F.2d 965
(8th Cir. 1991)

Bankruptcy court abused its discretion by vacating order lifting automatic stay after debtors failed to honor a settlement agreement with creditor requiring payment of debts in installments.

Armstrong v. Norwest Bank, Minneapolis, N.A., 964 F.2d 797
(8th Cir. 1992)

Chapter 7 trustee, following conversion of case from Chapter 11, was bound by acts of debtor-in-possession in entering into stipulations with regard to cash collateral and by decisions of courts regarding such stipulations.

U.S. Through Farmers Home Admin. v. Nelson,
969 F.2d 626
(8th Cir. 1992)

Chapter 7 trustee and Farmers Home Admin. did not illegally subvert debtors' rights by entering into stipulation agreeing to liquidate debtors' farm free and clear of all encumbrances, even though stipulation eliminated need for FmHA to foreclose on property and rendered the debtors ineligible for "preservation rights" under Agricultural Credit Act.

Judge v. Production Credit
Ass'n of Midlands,
969 F.2d 699
(8th Cir. 1992)

District court's factual findings that there was no binding agreement between debtors and creditor to restructure debtors' loan and to forgive a substantial amount of the debt were not clearly erroneous.

STUDENT LOANS

In re Groves, 39 F.3d 212
(8th Cir. 1994)

Nondischargeability of student loans was not a sufficient basis for separate classification. A plan may pay student loans pro rata along with other unsecured claims and as a continuing obligation thereafter or may treat it as a long term indebtedness under § 1322(b)(5) by curing arrearages and maintaining regular payments.

SUBORDINATION

Schultz Broadway Inn v. U.S.,
912 F.2d 230 (8th Cir. 1990)

Subordination of nonpecuniary loss penalties was not precluded in Chapter 11 proceeding, even though nonpecuniary loss penalty claims are, under the Bankruptcy Code, expressly subordinated only in Chapter 7.

In re First Truck Lines, Inc.,
517 U.S. 535, 116 S.Ct. 1524 (1996)

A Bankruptcy Court's power to equitably subordinate claims under section 510 is restricted by statutory ordering. Absent creditor misconduct, subordination

cannot occur where the Code provides for priorities.

SUBSTANTIAL ABUSE

U. S. Trustee v. Harris,
960 F.2d 74 (8th Cir. 1992)

District court properly ordered dismissal of Chapter 7 petition for "substantial abuse," where debtors' disposable income would enable them to pay approximately 156% of their unsecured debt over three years, only in Chapter 7.

Fonder v. U.S., 974 F.2d 996
(8th Cir. 1992)

Debtor had sufficient disposable income to fund a Chapter 13 plan, warranting dismissal of his Chapter 7 petition for "substantial abuse."

In re Young, 82 F.3d 1407
(8th Cir. 1996)

The free exercise of religion protected by the Religious Freedom Reformation Act, provides a variable defense against an otherwise voidable preference. Arguably, it also preserves tithings against claims of excessive monthly expenditures.

TAX LIABILITY

Holywell Corp. v. Smith, 503 U.S. 47,
112 S.Ct. 1021 (1992)

Trustee, as assignee of "all" or "substantially all" of property of corporate debtors, had to file returns and pay taxes that the corporate debtors would have been required to file

In re Olson, 154 B.R. 276
(Bankr. D.N.D. 1993)

TAXES

In re Koppinger, 113 B. R. 588,
(Bankr. D.N.D. 1990)

In re Bentley, 916 F.2d 431
(8th Cir. 1990)

In re Smith, 921 F.2d 136
(8th Cir. 1991)

In re Jehan-Das, Inc.,
925 F.2d 237 (8th Cir. 1991)

and pay absent assignment.

Tax penalties based on
acts that occurred more
than three years
prepetition are discharge-
able regardless of
dischargeability status of
underlying tax debts.

Perfected security interest
in accounts receivable for
sale of motor fuel was not
broad enough to encompass
amounts representing fuel
taxes.

Chapter 7 estate's
liability for tax on gain
from sale of corn crop
and on interest earned
on the sale proceeds was
not abrogated by abandon-
ment of property by
Chapter 7 trustee.

Turnover proceeding brought
by trustee against
Government to recover tax
overpayment could not be
maintained in the absence
of a timely claim for
refund.

IRS could apply payment on
post-petition tax claim by
corporate Chapter 11 debtor
first to nontrust fund
taxes and preserve its
recourse with respect to
the responsible individual
on trust fund taxes.

In re Olson, 930 F.2d 6
(8th Cir. 1991)

Abandonment of property by Chapter 7 estate was not a "sale or exchange," and was accordingly not a taxable event giving rise to federal or Iowa tax liability for the estate.

In re Wallerstedt,
930 F.3d 630
(8th Cir. 1991)

Federal and state income tax refunds that debtors received when their employers withheld too much of their earnings were not themselves "earnings," within the meaning of Missouri exemption statute.

I.R.S. v. Boatmen's First Nat. Bank of Kansas City,
5 F.3d 1157 (8th Cir. 1993)

IRS may recover post-petition payroll taxes from secured collateral as a cost incidental to preserving the estate where secured creditor agrees to the preservation.

In re Jefferson Lines, Inc.,
15 F.3d 90 (8th Cir. 1994)
Reversed in Oklahoma Tax Com. v. Jefferson Lines, Inc.

514 U.S. 175, 115 S. Ct. 1331
(1995)

Chapter 11 debtor-bus company was not required to pay Oklahoma sales tax on gross price of interstate bus tickets sold in Oklahoma because the tax violated the Commerce Clause.

In re L. J. O'Neill Shoe Co.,
64 F.3d 1146 (8th Cir. 1995)

Construing § 503(b)(1)(B)(i) and 507(a)(7)(iii), court holds that portions of state tax claims relating to debtors pre-petition corporate income were not administrative

expenses, but were entitled only to seventh priority as taxes not assessed pre-petition but assessable post petition. Subsection (iii) addresses only pre-petition taxable activity or events.

United States v. Reorganized CF&I Fabricators of Utah, 518 U.S. 213; 116 S.Ct. 2106 (1996)

The exaction tax imposed under 26 USCA § 4971 on accumulated pensions funding deficiencies is not an "excise tax" entitled to priority under § 507. It is an ordinary unsecured claim.

In re Juvenile Shoe Corp. of America, 99 F.3d 898 (8th Cir. 1996)

Whether an IRS assessment is "excise tax" or "penalty" requires looking beyond the label to how it operates. Here court defines "tax", "excise tax" and "penalty" for priority purposes and determines that a flat tax levied on surplus funds remaining after employer liquidated its overfunded pension plan was an "excise tax" entitled to a seventh priority.

TRUSTEES

In re Russell, 927 F.2d 413 (8th Cir. 1991)

Debtor-in-possession's election to carry forward net operating losses was an unauthorized post-petition transfer, voidable by trustee if not in the ordinary course of business.

In re Olson, 930 F.2d 6

Abandonment of property by

(8th Cir. 1991)

Chapter 7 estate was not a "sale or exchange," and was accordingly not a taxable event giving rise to federal or Iowa tax liability for the estate.

Holywell Corp. v Smith, 503 U.S. 47, 112 S.Ct. 1021 (1992)

The U. S. Supreme Court ruled, 1992 WL 30614, that a trustee appointed pursuant to a confirmed plan to liquidate and distribute the Chapter 11 debtors' property after the property was transferred to a trust had to file income tax returns and pay income taxes under the Internal Revenue Code.

Taylor v. Freeland & Kronz, 503 U.S. 638, 112 S. Ct. 1644 (1992)

The U.S. Supreme Court ruled that a Chapter 7 trustee could not assert an untimely challenge to the debtor's claimed exemption, even if the debtor did not have a colorable statutory basis for claiming the exemption.

Stumpf v. Albracht, 982 F.2d 275 (8th Cir. 1992)

Existence of bankruptcy does not grant trustee a cause of action against 3rd parties which would have been unavailable to the debtor.

In re Wagner, 150 B.R. 753 (Bankr. D.N.D. 1993)
Reversed in 159 B.R. 268 (D.C. N.D. 1993)

All payments on impaired claims are payments "under the plan," and are subject to Chapter 12 trustee's fee, plan

In re Wagner, 159 B.R. 268
(D.C. N.D. 1993) aff'd.
36 F.3d 723 (8th Cir. 1994)

Aviation Supply Corp. v.
R.S.B.I. Aerospace, Inc.,
999 F.2d 314 (8th Cir. 1993)

In re H & S Motor Freight, Inc.,
23 F.3d 1431 (8th Cir. 1994)

McCuskey v. Central Trailer
Services, Ltd., 37 F.3d 1329
(8th Cir. 1994)

Pelofsky v. Wallace, 102 F.3d 350
(8th Cir. 1996)

provisions notwithstanding.

Chapter 12 debtor could
directly pay impaired
claims without paying
trustee's fee.

Judgment debtor's pattern
of willful non-disclosure
of assets, false
disclosures, and transfer
to avoid tenacious
judgment creditor warranted
appointment of receiver
for the judgment debtor.

Trustee fee formula
provided by Bankruptcy
Amendments and Federal
Judgeship Act that would
have allowed enhanced
compensation did not apply
to trustee in case
converted to Chapter 7
before amendments took
effect, even though bulk
of trustee's ten years of
service occurred after
amendments were adopted.

Statute of limitations
on preference avoidance
claim ran from date of
Chapter 11 trustee's
appointment, not from
Chapter 7 trustee's
appointment following
conversion of case.

The percentage fee for
Chapter 12 trustees is based
upon amount the trustee

TRUSTS

In re Paulson, 150 B.R. 960
(Bankr. D.N.D. 1993)

receives for disbursement to creditors and does not include sums received for trustee's fee.

Chiu v. Wong, 16 F.3d 306
(8th Cir. 1994)

Constructive trust did not arise out of guarantor's execution and satisfaction of agreement to guarantee loan made by bank to debtor.

Drewes v. Schonteich,
31 F.3d 674 (8th Cir. 1994)

Former partner of Chapter 13 debtor's husband sufficiently traced proceeds of his partnership property into debtor's homestead, and, thus, was entitled to a constructive trust on homestead to extent that funds for purchase of home came from partnership assets.

In re Markmueller, 51 F.3d 775
(8th Cir. 1995)

Agreements under which settlor gave cash and stock to charitable institution that agreed to pay settlor's caretaker monthly payments which were non-assignable and terminated at caretaker's death complied with California spendthrift trust law, and, thus, were excluded from caretaker's bankruptcy estate.

Trust assets were includable in settlor's Chapter 7 estate because spendthrift provisions were invalid under Missouri law.

In re Jeter, 73 F.3d 205
(8th Cir. 1996)

Constructive trust would not be imposed on assets of Chapter 7 debtors" corporation in favor of single judgment creditor because such creditor was situated like every other creditor and was not entitled to any special rights.

In re Rine & Rine Auctioneers, Inc., 74 F.3d 848 (8th Cir. 1996)

Under Nebraska law, because Chapter 7 debtor-auctioneer was not agent of its customer once auction proceeds were property of debtor's bankruptcy estate.

In re Rine & Rine Auctioneers, Inc., 74 F.3d 854 (8th Cir. 1996)

Under Nebraska law, because Chapter 7 debtor-auctioneer was not customer's agent at time auction proceeds were deposited in debtor's bank account and then paid to customer and bank, proceeds were estate property that trustee could recover as preferences.

Ricke v. Armco Inc.,
92 F.3d 720, (8th Cir. 1996)

Payment to trust beneficiary by third party liable to trust does not give third party a legal defense to claim by trustee, not even when circuitry-of-action would otherwise result; at most, third party has equitable defense to trustee's action.

TURNOVER

Evans v. Robbins,
897 F.2d 966
(8th Cir. 1990)

Doctrine of continued possession warranted order requiring turnover of assets held by involuntary Chapter 7 debtors, though more than six years had elapsed since filing of petition, where the debtors had attempted to hide assets and their proceeds through confusion of goods, concealment, false statements, and failure to produce documents.

In re Borchert, 143 B.R. 917
(Bankr. D.N.D. 1992)

Entities which had held Chapter 7 debtor's IRA funds failed to overcome presumption of receipt of notice of debtor's bankruptcy filing, and had to be held in contempt for failing to comply with turnover order.

Stoebner v. Murray, 91 F.3d 1091

Collateral estoppel did (8th Cir. 1996) not bar litigation of a turnover order because none of the issues concerning the origin of the funds had been actually litigated or determined by a prior decision.

UNITED STATES

Farmers State Sav. Bank v. Farmers Home Admin., 891 F.2d 200,
(8th Cir. 1989)

Bank's complaint against FmHA, seeking recovery for loss sustained when borrowers declared bankruptcy after bank had

made farm ownership loan to borrowers with understanding that FmHA had committed itself to making loan to borrowers with which they could repay bank, was barred under Federal Tort Claims Act section precluding claims arising out of misrepresentation.

U.S. TRUSTEE'S FEES

In re Juhl Enterprises, Inc.,
921 F.2d 800
(8th Cir. 1991)

U.S. Trustee's quarterly fees, incurred by debtor in Chapter 11 case prior to conversion to Chapter 7, had priority over Chapter 11 administrative expenses and same level of priority as Chapter 7 administrative expenses.

VALUATION

In re Trimble, 50 F.3d 530
(8th Cir. 1995)

Value of vehicle that Chapter 13 debtor intended to retain was retail, not wholesale value, for purpose of determining amount secured creditor had to receive for plan to be confirmed over creditor's objection.

VENUE

Setco Enterprises Corp. v. Robbins,
19 F.3d 1278 (8th Cir. 1994)

Fraud action that was based, at least in part, on debtors' assets was appropriately brought in same judicial district in which bankruptcy court that issued order was located.

WILLFUL AND MALICIOUS INJURY

In re Hofmann, 144 B.R. 459
(Bankr. D.N.D. 1992)

Judgment arising out of debtor's failure to return all leased cattle on demand was not nondischargeable on grounds of willful and malicious conversion of property.

In re Bumann, 147 B.R. 44
(Bankr. D.N.D. 1992)

Creditor's contingent, unliquidated claim based on Chapter 7 debtor's willful and malicious physical assault at outdoor social function was nondischargeable.

In re Haakenson, 159 B.R. 875
(Bankr. D.N.D. 1993)

Discharge exception for willful and malicious injury applied to losses sustained by insurance company that purchased insurance business from debtor's insurance agency.

In re Lacina, 162 B.R. 267
(Bankr. D.N.D. 1994)

Debt arising out of unauthorized and surreptitious acts by debtor-dealer of repeatedly forging seed supplier's endorsement on customers' checks and converting proceeds therefrom to his personal use came within discharge exception for willful and malicious injury.

In re Roehrich, 169 B.R. 941
(Bankr. D.N.D. 1994)

Chapter 7 debtor's conviction previously entered against him following his guilty plea to charge of theft of

horses had collateral estoppel effect in proceeding to determine if related debt fell within exception to discharge for willful and malicious injury.

In re Foust, 52 F.3d 766
(8th Cir. 1995)

Debtor willfully and maliciously injured government agency's collateral for non-dischargeability purposes by secretly converting crop that secured a government loan.

In re Geiger, 93 F.3d 443
(8th Cir. 1996)
aff'd en banc decision
113 F.3d 848 (8th Cir. 1997)

Conduct which is merely reckless without proof that the debtor intentionally inflicted injury is not malicious within meaning of § 523(a)(5).

In re Waugh, 95 F.3d 706
(8th Cir. 1996).

Although a determination of willfulness & maliciousness invokes a question of intent factual findings are nonetheless subject to review where physical, documentary and other evidence contradicts a witnesses' story.

WORKER'S COMPENSATION

In re HLM Corp., 62 F.3d 224
(8th Cir. 1995)

Unpaid prepetition premiums under Minnesota's workers' compensation scheme were not "contributions to an employee benefit plan," entitled to priority status in employer's Chapter 7 case.